

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2022

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number 001-32318



DEVON ENERGY CORPORATION  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

333 West Sheridan Avenue, Oklahoma City, Oklahoma  
(Address of principal executive offices)

73-1567067  
(I.R.S. Employer  
identification No.)

73102-5015  
(Zip code)

Registrant's telephone number, including area code: (405) 235-3611

Former name, address and former fiscal year, if changed from last report: Not applicable

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.10 per share	DVN	The New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>	Non-accelerated filer	<input type="checkbox"/>
Smaller reporting company	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

On October 19, 2022, 653.7 million shares of common stock were outstanding.

DEVON ENERGY CORPORATION

FORM 10-Q

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## DEFINITIONS

Unless the context otherwise indicates, references to “us,” “we,” “our,” “ours,” “Devon,” the “Company” and “Registrant” refer to Devon Energy Corporation and its consolidated subsidiaries. All monetary values, other than per unit and per share amounts, are stated in millions of U.S. dollars unless otherwise specified. In addition, the following are other abbreviations and definitions of certain terms used within this Quarterly Report on Form 10-Q:

“2017 Plan” means the Devon Energy Corporation 2017 Long-Term Incentive Plan.

“2022 Plan” means the Devon Energy Corporation 2022 Long-Term Incentive Plan.

“Bbl” or “Bbls” means barrel or barrels.

“Boe” means barrel of oil equivalent. Gas proved reserves and production are converted to Boe, at the pressure and temperature base standard of each respective state in which the gas is produced, at the rate of six Mcf of gas per Bbl of oil, based upon the approximate relative energy content of gas and oil. NGL proved reserves and production are converted to Boe on a one-to-one basis with oil.

“Btu” means British thermal units, a measure of heating value.

“Canada” means the division of Devon encompassing oil and gas properties located in Canada. On June 27, 2019, all of Devon’s Canadian operating assets and operations were divested. All dollar amounts associated with Canada are in U.S. dollars, unless stated otherwise.

“Catalyst” means Catalyst Midstream Partners, LLC.

“CDM” means Cotton Draw Midstream, L.L.C.

“DD&A” means depreciation, depletion and amortization expenses.

“ESG” means environmental, social and governance.

“G&A” means general and administrative expenses.

“GAAP” means U.S. generally accepted accounting principles.

“Inside FERC” refers to the publication *Inside FERC’s Gas Market Report*.

“LOE” means lease operating expenses.

“MBbls” means thousand barrels.

“MBoe” means thousand Boe.

“Mcf” means thousand cubic feet.

“Merger” means the merger of Merger Sub with and into WPX, with WPX continuing as the surviving corporation and a wholly-owned subsidiary of the Company, pursuant to the terms of the Merger Agreement.

“Merger Agreement” means that certain Agreement and Plan of Merger, dated September 26, 2020, by and among the Company, Merger Sub and WPX.

“Merger Sub” means East Merger Sub, Inc., a wholly-owned subsidiary of the Company.

“MMBoe” means million Boe.

“MMBtu” means million Btu.

“MMcf” means million cubic feet.

“N/M” means not meaningful.

“NCI” means noncontrolling interests.

“NGL” or “NGLs” means natural gas liquids.

“NYMEX” means New York Mercantile Exchange.

“OPEC” means Organization of the Petroleum Exporting Countries.

“SEC” means United States Securities and Exchange Commission.

“Senior Credit Facility” means Devon’s syndicated unsecured revolving line of credit, effective as of October 5, 2018.

“TSR” means total shareholder return.

“U.S.” means United States of America.

“VIE” means variable interest entity.

“WPX” means WPX Energy, Inc.

“WTI” means West Texas Intermediate.

“/Bbl” means per barrel.

“/d” means per day.

“/MMBtu” means per MMBtu.

## INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

This report includes “forward-looking statements” as defined by the SEC. Such statements include those concerning strategic plans, our expectations and objectives for future operations, as well as other future events or conditions, and are often identified by use of the words and phrases “expects,” “believes,” “will,” “would,” “could,” “continue,” “may,” “aims,” “likely to be,” “intends,” “forecasts,” “projections,” “estimates,” “plans,” “expectations,” “targets,” “opportunities,” “potential,” “anticipates,” “outlook” and other similar terminology. All statements, other than statements of historical facts, included in this report that address activities, events or developments that Devon expects, believes or anticipates will or may occur in the future are forward-looking statements. Such statements are subject to a number of assumptions, risks and uncertainties, many of which are beyond our control. Consequently, actual future results could differ materially and adversely from our expectations due to a number of factors, including, but not limited to:

- the volatility of oil, gas and NGL prices;
- risks relating to the COVID-19 pandemic or other future pandemics;
- uncertainties inherent in estimating oil, gas and NGL reserves;
- the extent to which we are successful in acquiring and discovering additional reserves;
- regulatory restrictions, compliance costs and other risks relating to governmental regulation, including with respect to environmental matters;
- risks related to regulatory, social and market efforts to address climate change;
- the uncertainties, costs and risks involved in our operations, including as a result of employee misconduct;
- risks related to our hedging activities;
- counterparty credit risks;
- risks relating to our indebtedness;
- cyberattack risks;
- our limited control over third parties who operate some of our oil and gas properties;
- midstream capacity constraints and potential interruptions in production;
- the extent to which insurance covers any losses we may experience;
- competition for assets, materials, people and capital;
- risks related to investors attempting to effect change;
- our ability to successfully complete mergers, acquisitions and divestitures;
- our ability to pay dividends and make share repurchases; and
- any of the other risks and uncertainties discussed in this report, our [2021 Annual Report on Form 10-K](#) and our other filings with the SEC.

All subsequent written and oral forward-looking statements attributable to Devon, or persons acting on its behalf, are expressly qualified in their entirety by the cautionary statements above. We assume no duty to update or revise our forward-looking statements based on new information, future events or otherwise.

**Part I. Financial Information**
**Item 1. Financial Statements**

**DEVON ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE EARNINGS**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
	(Unaudited)			
Oil, gas and NGL sales	\$ 3,668	\$ 2,635	\$ 10,943	\$ 6,546
Oil, gas and NGL derivatives	248	(335)	(605)	(1,566)
Marketing and midstream revenues	1,516	1,166	4,532	2,953
Total revenues	5,432	3,466	14,870	7,933
Production expenses	735	555	2,082	1,526
Exploration expenses	4	3	16	9
Marketing and midstream expenses	1,525	1,165	4,549	2,972
Depreciation, depletion and amortization	581	578	1,598	1,581
Asset dispositions	—	—	(15)	(119)
General and administrative expenses	95	95	273	296
Financing costs, net	67	86	236	243
Restructuring and transaction costs	—	18	—	230
Other, net	(40)	2	(91)	(41)
Total expenses	2,967	2,502	8,648	6,697
Earnings before income taxes	2,465	964	6,222	1,236
Income tax expense (benefit)	565	120	1,389	(85)
Net earnings	1,900	844	4,833	1,321
Net earnings attributable to noncontrolling interests	7	6	19	14
Net earnings attributable to Devon	\$ 1,893	\$ 838	\$ 4,814	\$ 1,307
Net earnings per share:				
Basic net earnings per share:	\$ 2.89	\$ 1.24	\$ 7.30	\$ 1.95
Diluted net earnings per share:	\$ 2.88	\$ 1.24	\$ 7.28	\$ 1.95
Comprehensive earnings:				
Net earnings	\$ 1,900	\$ 844	\$ 4,833	\$ 1,321
Other comprehensive earnings, net of tax:				
Pension and postretirement plans	1	1	3	27
Other comprehensive earnings, net of tax	1	1	3	27
Comprehensive earnings:	1,901	845	4,836	1,348
Comprehensive earnings attributable to noncontrolling interests	7	6	19	14
Comprehensive earnings attributable to Devon	\$ 1,894	\$ 839	\$ 4,817	\$ 1,334

See accompanying notes to consolidated financial statements

**DEVON ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
	(Unaudited)			
Cash flows from operating activities:				
Net earnings	\$ 1,900	\$ 844	\$ 4,833	\$ 1,321
Adjustments to reconcile net earnings to net cash from operating activities:				
Depreciation, depletion and amortization	581	578	1,598	1,581
Leasehold impairments	2	1	10	3
Amortization of liabilities	(8)	(7)	(23)	(21)
Total (gains) losses on commodity derivatives	(248)	335	605	1,566
Cash settlements on commodity derivatives	(363)	(370)	(1,179)	(969)
Gains on asset dispositions	—	—	(15)	(119)
Deferred income tax expense (benefit)	445	119	914	(100)
Share-based compensation	22	19	65	80
Early retirement of debt	—	—	—	(30)
Other	8	11	(9)	13
Changes in assets and liabilities, net	(235)	68	(180)	(42)
Net cash from operating activities	2,104	1,598	6,619	3,283
Cash flows from investing activities:				
Capital expenditures	(628)	(474)	(1,738)	(1,477)
Acquisitions of property and equipment	(2,465)	(10)	(2,566)	(15)
Divestitures of property and equipment	4	1	39	65
WPX acquired cash	—	—	—	344
Distributions from investments	7	9	30	27
Contributions to investments	(16)	—	(59)	—
Net cash from investing activities	(3,098)	(474)	(4,294)	(1,056)
Cash flows from financing activities:				
Repayments of long-term debt	—	—	—	(1,243)
Early retirement of debt	—	—	—	(59)
Repurchases of common stock	(126)	—	(661)	—
Dividends paid on common stock	(1,007)	(329)	(2,504)	(761)
Contributions from noncontrolling interests	—	1	—	4
Distributions to noncontrolling interests	(9)	(6)	(22)	(15)
Acquisition of noncontrolling interests	—	—	—	(24)
Shares exchanged for tax withholdings and other	(1)	(3)	(86)	(45)
Net cash from financing activities	(1,143)	(337)	(3,273)	(2,143)
Effect of exchange rate changes on cash	(10)	(5)	(13)	—
Net change in cash, cash equivalents and restricted cash	(2,147)	782	(961)	84
Cash, cash equivalents and restricted cash at beginning of period	3,457	1,539	2,271	2,237
Cash, cash equivalents and restricted cash at end of period	\$ 1,310	\$ 2,321	\$ 1,310	\$ 2,321
Reconciliation of cash, cash equivalents and restricted cash:				
Cash and cash equivalents	\$ 1,166	\$ 2,144	\$ 1,166	\$ 2,144
Restricted cash	144	177	144	177
Total cash, cash equivalents and restricted cash	\$ 1,310	\$ 2,321	\$ 1,310	\$ 2,321

See accompanying notes to consolidated financial statements

**DEVON ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**

	September 30, 2022 (Unaudited)	December 31, 2021
<b>ASSETS</b>		
Current assets:		
Cash, cash equivalents and restricted cash	\$ 1,310	\$ 2,271
Accounts receivable	2,061	1,543
Other current assets	638	435
Total current assets	4,009	4,249
Oil and gas property and equipment, based on successful efforts accounting, net	16,258	13,536
Other property and equipment, net (\$119 million and \$111 million related to CDM in 2022 and 2021, respectively)	1,535	1,472
Total property and equipment, net	17,793	15,008
Goodwill	753	753
Right-of-use assets	232	235
Investments	431	402
Other long-term assets	339	378
Total assets	<u>\$ 23,557</u>	<u>\$ 21,025</u>
<b>LIABILITIES AND EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 761	\$ 500
Revenues and royalties payable	1,810	1,456
Short-term debt	255	—
Other current liabilities	634	1,131
Total current liabilities	3,460	3,087
Long-term debt	6,196	6,482
Lease liabilities	259	252
Asset retirement obligations	498	468
Other long-term liabilities	941	1,050
Deferred income taxes	1,196	287
Stockholders' equity:		
Common stock, \$0.10 par value. Authorized 1.0 billion shares; issued 654 million and 663 million shares in 2022 and 2021, respectively	65	66
Additional paid-in capital	6,956	7,636
Retained earnings	3,981	1,692
Accumulated other comprehensive loss	(129)	(132)
Total stockholders' equity attributable to Devon	10,873	9,262
Noncontrolling interests	134	137
Total equity	11,007	9,399
Total liabilities and equity	<u>\$ 23,557</u>	<u>\$ 21,025</u>

See accompanying notes to consolidated financial statements



**DEVON ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF EQUITY**

	Common Stock		Additional	Other Comprehensive					
	Shares	Amount	Paid-In Capital	Retained Earnings	Earnings (Loss)	Treasury Stock	Noncontrolling Interests	Total Equity	
(Unaudited)									
Three Months Ended September 30, 2022									
Balance as of June 30, 2022	656	\$ 66	\$ 7,060	\$ 3,107	\$ (130)	\$ (13)	\$ 136	\$ 10,226	
Net earnings	—	—	—	1,893	—	—	7	1,900	
Other comprehensive earnings, net of tax	—	—	—	—	1	—	—	1	
Restricted stock grants, net of cancellations	—	—	1	—	—	—	—	1	
Common stock repurchased	—	—	—	—	—	(115)	—	(115)	
Common stock retired	(2)	(1)	(127)	—	—	128	—	—	
Common stock dividends	—	—	—	(1,019)	—	—	—	(1,019)	
Share-based compensation	—	—	22	—	—	—	—	22	
Distributions to noncontrolling interests	—	—	—	—	—	—	(9)	(9)	
Balance as of September 30, 2022	654	\$ 65	\$ 6,956	\$ 3,981	\$ (129)	\$ —	\$ 134	\$ 11,007	
Three Months Ended September 30, 2021									
Balance as of June 30, 2021	677	\$ 68	\$ 8,189	\$ 243	\$ (101)	\$ —	\$ 136	\$ 8,535	
Net earnings	—	—	—	838	—	—	6	844	
Other comprehensive earnings, net of tax	—	—	—	—	1	—	—	1	
Restricted stock grants, net of cancellations	—	—	(1)	—	—	—	—	(1)	
Common stock repurchased	—	—	—	—	—	(1)	—	(1)	
Common stock retired	—	—	(1)	—	—	1	—	—	
Common stock dividends	—	—	—	(331)	—	—	—	(331)	
Share-based compensation	—	—	19	—	—	—	—	19	
Contributions from noncontrolling interests	—	—	—	—	—	—	1	1	
Distributions to noncontrolling interests	—	—	—	—	—	—	(6)	(6)	
Balance as of September 30, 2021	677	\$ 68	\$ 8,206	\$ 750	\$ (100)	\$ —	\$ 137	\$ 9,061	
Nine Months Ended September 30, 2022									
Balance as of December 31, 2021	663	\$ 66	\$ 7,636	\$ 1,692	\$ (132)	\$ —	\$ 137	\$ 9,399	
Net earnings	—	—	—	4,814	—	—	19	4,833	
Other comprehensive earnings, net of tax	—	—	—	—	3	—	—	3	
Restricted stock grants, net of cancellations	2	1	2	—	—	—	—	3	
Common stock repurchased	—	—	—	—	—	(749)	—	(749)	
Common stock retired	(12)	(2)	(747)	—	—	749	—	—	
Common stock dividends	—	—	—	(2,525)	—	—	—	(2,525)	
Share-based compensation	1	—	65	—	—	—	—	65	
Distributions to noncontrolling interests	—	—	—	—	—	—	(22)	(22)	
Balance as of September 30, 2022	654	\$ 65	\$ 6,956	\$ 3,981	\$ (129)	\$ —	\$ 134	\$ 11,007	
Nine Months Ended September 30, 2021									
Balance as of December 31, 2020	382	\$ 38	\$ 2,766	\$ 208	\$ (127)	\$ —	\$ 134	\$ 3,019	
Net earnings	—	—	—	1,307	—	—	14	1,321	
Other comprehensive earnings, net of tax	—	—	—	—	27	—	—	27	
Restricted stock grants, net of cancellations	6	1	(2)	—	—	—	—	(1)	
Common stock repurchased	—	—	—	—	—	(41)	—	(41)	
Common stock retired	(2)	—	(41)	—	—	41	—	—	
Common stock dividends	—	—	—	(765)	—	—	—	(765)	
Common stock issued	290	29	5,403	—	—	—	—	5,432	
Share-based compensation	1	—	80	—	—	—	—	80	
Contributions from noncontrolling interests	—	—	—	—	—	—	3	3	
Distributions to noncontrolling interests	—	—	—	—	—	—	(14)	(14)	
Balance as of September 30, 2021	677	\$ 68	\$ 8,206	\$ 750	\$ (100)	\$ —	\$ 137	\$ 9,061	

See accompanying notes to consolidated financial statements

**DEVON ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**1. Summary of Significant Accounting Policies**

The accompanying unaudited interim financial statements and notes of Devon have been prepared pursuant to the rules and regulations of the SEC. Pursuant to such rules and regulations, certain disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been omitted. The accompanying unaudited interim financial statements and notes should be read in conjunction with the financial statements and notes included in Devon's [2021 Annual Report on Form 10-K](#). The accompanying unaudited interim financial statements in this report reflect all adjustments that are, in the opinion of management, necessary for a fair statement of Devon's results of operations and cash flows for the three-month and nine-month periods ended September 30, 2022 and 2021 and Devon's financial position as of September 30, 2022.

Devon and WPX completed an all-stock merger of equals on January 7, 2021. On the closing date of the Merger, each share of WPX common stock was automatically converted into the right to receive 0.5165 of a share of Devon common stock. The transaction has been accounted for using the acquisition method of accounting, with Devon being treated as the accounting acquirer. See [Note 2](#) for further discussion.

***Restricted Cash***

As of September 30, 2022, Devon classified approximately \$125 million of cash as restricted cash on the consolidated balance sheets for obligations retained related to the Barnett Shale assets and the Canadian business. Cash payments for these charges related to the Barnett assets and Canada business total approximately \$10 million per quarter.

***Variable Interest Entity***

Cotton Draw Midstream, L.L.C. ("CDM") is a joint venture entity formed by Devon and an affiliate of QL Capital Partners, LP. CDM provides gathering, compression and dehydration services for natural gas production in the Cotton Draw area of the Delaware Basin. Devon holds a controlling interest in CDM and the portions of CDM's net earnings and equity not attributable to Devon's controlling interest are shown separately as noncontrolling interests in the accompanying consolidated statements of comprehensive earnings and consolidated balance sheets. CDM is considered a VIE to Devon. The assets of CDM cannot be used by Devon for general corporate purposes and are included in, and disclosed parenthetically, on Devon's consolidated balance sheets. The carrying amount of liabilities related to CDM for which the creditors do not have recourse to Devon's assets are also included in, and disclosed parenthetically, if material, on Devon's consolidated balance sheets.

***Investments***

The following table presents Devon's investments.

Investments	% Interest	Carrying Amount	
		September 30, 2022	December 31, 2021
Catalyst	50%	\$ 347	\$ 368
Other	Various	84	34
Total		\$ 431	\$ 402

In conjunction with the Merger, Devon acquired an interest in Catalyst, which is a joint venture established among WPX, an affiliate of Howard Energy Partners, LLC ("HEP") and certain other investors, to develop oil gathering and natural gas processing infrastructure in the Stateline area of the Delaware Basin. Under the terms of the arrangement, Devon and a holding company owned by the other joint venture investors each have a 50% voting interest in the joint venture legal entity, and HEP serves as the operator. Through 2038, Devon's production from 50,000 net acres in the Stateline area of the Delaware Basin has been dedicated to Catalyst subject to fixed-fee oil gathering and natural gas processing agreements. The agreements do not include any minimum volume commitments. Devon accounts for the investment in Catalyst as an equity method investment.

Devon's investment in Catalyst is shown within investments on the consolidated balance sheets and Devon's share of Catalyst earnings are reflected as a component of other, net in the accompanying consolidated statements of comprehensive earnings.

**DEVON ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

**Disaggregation of Revenue**

The following table presents revenue from contracts with customers that are disaggregated based on the type of good or service.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Oil	\$ 2,515	\$ 1,900	\$ 7,891	\$ 4,917
Gas	666	309	1,530	699
NGL	487	426	1,522	930
Oil, gas and NGL sales	3,668	2,635	10,943	6,546
Oil	787	649	2,515	1,758
Gas	387	196	918	477
NGL	342	321	1,099	718
Marketing and midstream revenues	1,516	1,166	4,532	2,953
Total revenues from contracts with customers	\$ 5,184	\$ 3,801	\$ 15,475	\$ 9,499

**2. Acquisitions and Divestitures**

**WPX Merger**

On January 7, 2021, Devon and WPX completed an all-stock merger of equals. WPX was an oil and gas exploration and production company with assets in the Delaware Basin in Texas and New Mexico and the Williston Basin in North Dakota. On the closing date of the Merger, each share of WPX common stock was automatically converted into the right to receive 0.5165 of a share of Devon common stock. No fractional shares of Devon's common stock were issued in the Merger, and holders of WPX common stock instead received cash in lieu of fractional shares of Devon common stock, if any. Based on the closing price of Devon's common stock on January 7, 2021, the total value of Devon common stock issued to holders of WPX common stock as part of this transaction was approximately \$5.4 billion. The Merger was structured as a tax-free reorganization for United States federal income tax purposes. The final allocation of the total purchase price of WPX to the identifiable assets acquired and the liabilities assumed was finalized at December 31, 2021.

**Acquisitions**

In September 2022, Devon completed its acquisition of producing properties and leasehold interests located in the Eagle Ford for cash consideration of approximately \$1.7 billion, net of purchase price adjustments. Additionally, in July 2022, Devon completed its acquisition of producing properties and leasehold interests located in the Williston Basin for cash consideration of approximately \$830 million, net of purchase price adjustments. The total estimated proved reserves associated with these Eagle Ford and Williston Basin assets is approximately 88 MMBoe and 66 MMBoe, respectively. Both of these acquisitions were accounted for as asset acquisitions as substantially all of the fair value was concentrated in a group of similar assets. Each of the acquisitions resulted in the purchase of producing properties and leasehold interests in a defined geographical and geological area and substantially all of the assets have similar risk characteristics.

**Divestitures**

In the first quarter of 2021, Devon completed the sale of non-core assets in the Rockies for proceeds of \$9 million, net of purchase price adjustments, and recognized a \$35 million gain related to the sale. Devon received \$4 million in contingent earnout payments related to this transaction in the first quarter of 2022 with the potential for up to an additional \$4 million in the future. The total estimated proved reserves associated with these divested assets was approximately 3 MMBoe.

**Barnett Contingent Earnout Payments**

Devon is entitled to contingent earnout payments associated with the sale of its Barnett Shale assets in 2020 with upside participation beginning at a \$2.75 Henry Hub natural gas price or a \$50 WTI oil price. The contingent payment period commenced on January 1, 2021 and has a term of four years. Devon received \$65 million in contingent earnout payments related to this transaction in the first quarter of 2022 and could receive up to an additional \$195 million in contingent earnout payments for the remaining performance periods depending on future commodity prices. The valuation of the future contingent earnout payments included within

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other current assets and other long-term assets in the September 30, 2022 consolidated balance sheet was approximately \$65 million and \$60 million, respectively. The value was derived utilizing a Monte Carlo valuation model and qualifies as a level 3 fair value measurement.

### 3. Derivative Financial Instruments

#### *Objectives and Strategies*

Devon enters into derivative financial instruments with respect to a portion of its oil, gas and NGL production to hedge future prices received. Additionally, Devon periodically enters into derivative financial instruments with respect to a portion of its oil, gas and NGL marketing activities. These commodity derivative financial instruments include financial price swaps, basis swaps, costless price collars and call options. Devon periodically enters into interest rate swaps to manage its exposure to interest rate volatility. As of September 30, 2022, Devon did not have any open interest rate swap contracts.

Devon does not intend to hold or issue derivative financial instruments for speculative trading purposes and has elected not to designate any of its derivative instruments for hedge accounting treatment.

#### *Counterparty Credit Risk*

By using derivative financial instruments, Devon is exposed to credit risk. Credit risk is the failure of the counterparty to perform under the terms of the derivative contract. To mitigate this risk, the hedging instruments are placed with a number of counterparties whom Devon believes are acceptable credit risks. It is Devon's policy to enter into derivative contracts only with investment-grade rated counterparties deemed by management to be competent and competitive market makers. Additionally, Devon's derivative contracts generally contain provisions that provide for collateral payments if Devon's or its counterparty's credit rating falls below certain credit rating levels. As of September 30, 2022, Devon neither held cash collateral of its counterparties nor posted cash collateral to its counterparties. Given Devon's current credit ratings and the terms of the underlying contracts, Devon is not currently required to post collateral to its counterparties with respect to its open derivative positions, and we would not be required to post any such collateral as a result of any change to the amount of Devon's net liability for such positions.

#### *Commodity Derivatives*

As of September 30, 2022, Devon had the following open oil derivative positions. The first table presents Devon's oil derivatives that settle against the average of the prompt month NYMEX WTI futures price. The second table presents Devon's oil derivatives that settle against the respective indices noted within the table.

Period	Price Swaps		Price Collars		
	Volume (Bbls/d)	Weighted Average Price (\$/Bbl)	Volume (Bbls/d)	Weighted Average Floor Price (\$/Bbl)	Weighted Average Ceiling Price (\$/Bbl)
Q4 2022	35,000	\$ 44.61	46,500	\$ 63.47	\$ 90.61
Q1-Q4 2023	—	\$ —	69,947	\$ 69.23	\$ 96.09

Period	Oil Basis Swaps		Weighted Average Differential to WTI (\$/Bbl)	
	Index	Volume (Bbls/d)		
Q4 2022	BRENT	1,000	\$	(7.75)
Q4 2022	NYMEX Roll	29,000	\$	0.45
Q1-Q4 2023	Midland Sweet	12,296	\$	0.52

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As of September 30, 2022, Devon had the following open natural gas derivative positions. The first table presents Devon's natural gas derivatives that settle against the Inside FERC first of the month Henry Hub index and the end of month NYMEX index. The second table presents Devon's natural gas derivatives that settle against the respective indices noted within the table.

Period	Price Swaps <sup>(1)</sup>		Price Collars <sup>(2)</sup>		
	Volume (MMBtu/d)	Weighted Average Price (\$/MMBtu)	Volume (MMBtu/d)	Weighted Average Floor Price (\$/MMBtu)	Weighted Average Ceiling Price (\$/MMBtu)
Q4 2022	125,000	\$ 3.34	165,000	\$ 3.16	\$ 4.82
Q1-Q4 2023	8,658	\$ 5.24	147,436	\$ 3.67	\$ 8.87
Q1-Q4 2024	—	\$ —	12,680	\$ 3.50	\$ 8.93

- (1) Related to the 2022 open positions, 25,000 MMBtu/d settle against the Inside FERC first of month Henry Hub index at an average price of \$5.89 and 100,000 MMBtu/d settle against the end of month NYMEX index at an average price of \$2.70. All 2023 open positions settle against the Inside FERC first of month Henry Hub index.
- (2) Price collars settle against the Inside FERC first of month Henry Hub Index.

Natural Gas Basis Swaps				
Period	Index	Volume (MMBtu/d)	Weighted Average Differential to Henry Hub (\$/MMBtu)	
Q4 2022	El Paso Natural Gas	50,000	\$	(0.85)
Q4 2022	Houston Ship Channel	40,000	\$	(0.15)
Q4 2022	WAHA	70,000	\$	(0.57)
Q1-Q4 2023	El Paso Natural Gas	140,041	\$	(1.58)
Q1-Q4 2023	Houston Ship Channel	90,000	\$	(0.15)
Q1-Q4 2023	WAHA	70,000	\$	(0.51)
Q1-Q4 2024	WAHA	40,000	\$	(0.51)

As of September 30, 2022, Devon did not have any open NGL positions.

#### **Financial Statement Presentation**

All derivative financial instruments are recognized at their current fair value as either assets or liabilities in the consolidated balance sheets. Amounts related to contracts allowed to be netted upon payment subject to a master netting arrangement with the same counterparty are reported on a net basis in the consolidated balance sheets. The tables below present a summary of these positions as of September 30, 2022 and December 31, 2021.

	September 30, 2022			December 31, 2021			Balance Sheet Classification
	Gross Fair Value	Amounts Netted	Net Fair Value	Gross Fair Value	Amounts Netted	Net Fair Value	
Commodity derivatives:							
Short-term derivative asset	\$ 186	\$ (88)	\$ 98	\$ 6	\$ (4)	\$ 2	Other current assets
Long-term derivative asset	63	(2)	61	6	—	6	Other long-term assets
Short-term derivative liability	(240)	88	(152)	(579)	4	(575)	Other current liabilities
Long-term derivative liability	(5)	2	(3)	(2)	—	(2)	Other long-term liabilities
Total derivative asset (liability)	<u>\$ 4</u>	<u>\$ —</u>	<u>\$ 4</u>	<u>\$ (569)</u>	<u>\$ —</u>	<u>\$ (569)</u>	

#### **4. Share-Based Compensation**

In the second quarter of 2022, Devon's stockholders approved the 2022 Plan. The 2022 Plan replaces the 2017 Plan. From the effective date of the 2022 Plan, no further awards may be made under the 2017 Plan; however, awards previously granted will continue to be governed by the terms of the respective award documents. The 2022 Plan authorizes the grant of nonqualified and incentive stock options, restricted stock awards or units and stock appreciation rights to eligible employees. Restricted stock awards or restricted stock units granted under the 2022 Plan may be subject to performance-based conditions. The 2022 Plan also authorizes the

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grant of nonqualified stock options, restricted stock awards or units and stock appreciation rights to non-employee directors. To calculate the number of shares that may be granted in awards under the 2022 Plan, options and stock appreciation rights represent one share and other awards represent 1.74 shares.

The table below presents the share-based compensation expense included in Devon's accompanying consolidated statements of comprehensive earnings. The vesting for certain share-based awards was accelerated in 2021 in conjunction with the reduction of workforce described in [Note 5](#) and is included in restructuring and transaction costs in the accompanying consolidated statements of comprehensive earnings.

	Nine Months Ended September 30,			
	2022		2021	
G&A	\$	64	\$	58
Exploration expenses		1		1
Restructuring and transaction costs		—		21
Total	\$	65	\$	80
Related income tax benefit	\$	31	\$	8

Under its approved long-term incentive plan, Devon grants share-based awards to its employees. The following table presents a summary of Devon's unvested restricted stock awards and units and performance share units granted under the plan.

	Restricted Stock Awards & Units		Performance Share Units	
		Weighted Average Grant-Date Fair Value		Weighted Average Grant-Date Fair Value
	Awards/Units		Units	
	(Thousands, except fair value data)			
Unvested at 12/31/21	7,656	\$ 22.15	2,076	\$ 24.12
Granted	1,389	\$ 53.43	964	\$ 44.05
Vested	(3,182)	\$ 23.10	(1,194)	\$ 28.91
Forfeited	(76)	\$ 33.88	(5)	\$ 68.68
Unvested at 9/30/22	5,787	\$ 28.99	1,841 <sup>(1)</sup>	\$ 31.33

(1) A maximum of 3.7 million common shares could be awarded based upon Devon's final TSR ranking.

The following table presents the assumptions related to the performance share units granted in 2022, as indicated in the previous summary table. The grants in the previous summary table also include the impact of performance share units granted in a prior year that vested higher than 100% of target due to Devon's TSR performance compared to our peers.

	2022
Grant-date fair value	\$ 68.68
Risk-free interest rate	1.81 %
Volatility factor	70.1 %
Contractual term (years)	2.89

The following table presents a summary of the unrecognized compensation cost and the related weighted average recognition period associated with unvested awards and units as of September 30, 2022.

	Restricted Stock Awards/Units	Performance Share Units
Unrecognized compensation cost	\$ 99	\$ 23
Weighted average period for recognition (years)	2.6	1.7

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**5. Restructuring and Transaction Costs**

The following table summarizes Devon's restructuring and transaction costs.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Restructuring costs	\$ —	\$ 16	\$ —	\$ 182
Transaction costs	—	2	—	48
Total costs	<u>\$ —</u>	<u>\$ 18</u>	<u>\$ —</u>	<u>\$ 230</u>

In conjunction with the Merger closing, Devon recognized \$182 million of restructuring expenses during the first nine months of 2021 related to employee severance and termination benefits, settlements and curtailments from defined retirement benefits and contract terminations. Of these expenses, \$65 million related to non-cash charges which primarily consisted of settlements and curtailments of defined retirement benefits of \$40 million and the accelerated vesting of share-based grants of \$21 million. Additionally, in conjunction primarily with the Merger closing, Devon recognized \$48 million of transaction costs primarily comprised of bank, legal and accounting fees.

The following table summarizes Devon's restructuring liabilities.

	Other Current Liabilities	Other Long-term Liabilities	Total
Balance as of December 31, 2021	\$ 38	\$ 111	\$ 149
Changes related to prior years' restructurings	(11)	(18)	(29)
Balance as of September 30, 2022	<u>\$ 27</u>	<u>\$ 93</u>	<u>\$ 120</u>
Balance as of December 31, 2020	\$ 35	\$ 137	\$ 172
Changes related to prior years' restructurings	19	(18)	1
Balance as of September 30, 2021	<u>\$ 54</u>	<u>\$ 119</u>	<u>\$ 173</u>

**6. Other, Net**

The following table summarizes Devon's other expenses (income) presented in the accompanying consolidated comprehensive statements of earnings.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Estimated future obligation under a performance guarantee	\$ (44)	\$ —	\$ (140)	\$ (18)
Ukraine charitable pledge	—	—	20	—
Asset retirement obligation accretion	5	7	18	21
Severance and other non-income tax refunds	—	—	(3)	(39)
Other	(1)	(5)	14	(5)
Total	<u>\$ (40)</u>	<u>\$ 2</u>	<u>\$ (91)</u>	<u>\$ (41)</u>

The first nine months of 2022 includes an approximately \$140 million benefit related to the revision of a future obligation under a performance guarantee liability for previously divested assets. Due to improved commodity prices and market conditions, in the third quarter of 2022, the purchaser of these assets reimbursed Devon \$44 million for the shortfall payments Devon and WPX previously made on the purchaser's behalf in 2021 and 2020. Additionally, in the first quarter of 2022, the purchaser was able to fully satisfy the \$35 million obligation due in 2022. Devon also reduced the estimated future exposure of the performance guarantee by \$61 million in 2022 based on probability-weighted cash flows for the remainder of the contract term of four years. The first nine months of 2021 includes an \$18 million benefit related to the revision of the future obligation as the purchaser was able to partially satisfy the obligation.

The first nine months of 2022 includes a \$20 million pledge for humanitarian relief for the Ukrainian people and surrounding countries supporting refugees.

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During the first nine months of 2021, Devon received severance and other non-income tax refunds of \$39 million.

## 7. Income Taxes

The following table presents Devon's total income tax expense (benefit) and a reconciliation of its effective income tax rate to the U.S. statutory income tax rate.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Earnings before income taxes	\$ 2,465	\$ 964	\$ 6,222	\$ 1,236
Current income tax expense	\$ 120	\$ 1	\$ 475	\$ 15
Deferred income tax expense (benefit)	445	119	914	(100)
Total income tax expense (benefit)	\$ 565	\$ 120	\$ 1,389	\$ (85)
U.S. statutory income tax rate	21 %	21 %	21 %	21 %
State income taxes	2 %	0 %	1 %	0 %
Deferred tax asset valuation allowance	0 %	(9 %)	0 %	(33 %)
Other	0 %	0 %	0 %	5 %
Effective income tax rate	23 %	12 %	22 %	(7 %)

On August 16, 2022 the Inflation Reduction Act was signed into law with an effective date beginning 2023. Devon does not expect any immediate material impacts to its income tax provision but will monitor guidance as released.

Prior to December 31, 2021, Devon maintained a valuation allowance against all U.S. federal deferred tax assets. Devon recognized approximately \$250 million of deferred tax liabilities to account for the Merger. The recognition of these deferred tax liabilities caused a decrease to Devon's net deferred tax assets and a corresponding decrease to the valuation allowance Devon had recognized on its U.S. federal deferred tax assets in the first quarter of 2021.

Due to significant increases in commodity pricing and projections of future income, in the fourth quarter of 2021, Devon reassessed its evaluation of the realizability of deferred tax assets in future years and determined that a U.S. federal valuation allowance was no longer necessary at December 31, 2021.

## 8. Net Earnings Per Share

The following table reconciles net earnings and weighted-average common shares outstanding used in the calculations of basic and diluted net earnings per share.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net earnings:				
Net earnings	\$ 1,893	\$ 838	\$ 4,814	\$ 1,307
Attributable to participating securities	(17)	(6)	(50)	(11)
Basic and diluted earnings	\$ 1,876	\$ 832	\$ 4,764	\$ 1,296
Common shares:				
Common shares outstanding - total	655	677	658	670
Attributable to participating securities	(6)	(6)	(6)	(6)
Common shares outstanding - basic	649	671	652	664
Dilutive effect of potential common shares issuable	2	2	2	2
Common shares outstanding - diluted	651	673	654	666
Net earnings per share:				
Basic	\$ 2.89	\$ 1.24	\$ 7.30	\$ 1.95
Diluted	\$ 2.88	\$ 1.24	\$ 7.28	\$ 1.95



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**9. Other Comprehensive Earnings (Loss)**

Components of other comprehensive earnings (loss) consist of the following:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Pension and postretirement benefit plans:				
Beginning accumulated pension and postretirement benefits	\$ (130)	\$ (101)	\$ (132)	\$ (127)
Recognition of net actuarial loss and prior service cost in earnings <sup>(1)</sup>	1	1	4	2
Settlement of pension benefits <sup>(2)</sup>	—	—	—	18
Other <sup>(3)</sup>	—	—	—	7
Income tax expense	—	—	(1)	—
Accumulated other comprehensive loss, net of tax	<u>\$ (129)</u>	<u>\$ (100)</u>	<u>\$ (129)</u>	<u>\$ (100)</u>

- (1) Recognition of net actuarial loss and prior service cost are included in the computation of net periodic benefit cost, which is a component of other, net in the accompanying consolidated statements of comprehensive earnings.
- (2) The Merger triggered settlement payments to certain plan participants, and the expense associated with this settlement is recognized as a component of restructuring and transaction costs in the accompanying consolidated statements of comprehensive earnings.
- (3) Other includes a remeasurement of the pension obligation due to the Merger, which was partially offset by a change in mortality assumption.

**10. Supplemental Information to Statements of Cash Flows**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Changes in assets and liabilities, net:				
Accounts receivable	\$ 364	\$ (332)	\$ (439)	\$ (495)
Other current assets	(84)	(19)	(105)	58
Other long-term assets	9	14	84	(9)
Accounts payable and revenues and royalties payable	(313)	469	474	557
Other current liabilities	(208)	(49)	(107)	(30)
Other long-term liabilities	(3)	(15)	(87)	(123)
Total	<u>\$ (235)</u>	<u>\$ 68</u>	<u>\$ (180)</u>	<u>\$ (42)</u>
Supplementary cash flow data:				
Interest paid	\$ 100	\$ 100	\$ 285	\$ 319
Income taxes paid (refunded)	\$ 253	\$ (4)	\$ 363	\$ (116)

**11. Accounts Receivable**

Components of accounts receivable include the following:

	September 30, 2022	December 31, 2021
Oil, gas and NGL sales	\$ 1,376	\$ 984
Joint interest billings	173	158
Marketing and midstream revenues	473	370
Other	46	38
Gross accounts receivable	<u>2,068</u>	<u>1,550</u>
Allowance for doubtful accounts	<u>(7)</u>	<u>(7)</u>
Net accounts receivable	<u>\$ 2,061</u>	<u>\$ 1,543</u>

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## 12. Property, Plant and Equipment

The following table presents the aggregate capitalized costs related to Devon's oil and gas and non-oil and gas activities.

	September 30, 2022	December 31, 2021
Property and equipment:		
Proved	\$ 41,803	\$ 38,051
Unproved and properties under development	1,579	1,081
Total oil and gas	43,382	39,132
Less accumulated DD&A	(27,124)	(25,596)
Oil and gas property and equipment, net	16,258	13,536
Other property and equipment	2,248	2,139
Less accumulated DD&A	(713)	(667)
Other property and equipment, net <sup>(1)</sup>	1,535	1,472
Property and equipment, net	\$ 17,793	\$ 15,008

(1) \$119 million and \$111 million related to CDM in 2022 and 2021, respectively.

## 13. Debt and Related Expenses

See below for a summary of debt instruments and balances. The notes and debentures are senior, unsecured obligations of Devon.

	September 30, 2022	December 31, 2021
8.25% due August 1, 2023	\$ 242	\$ 242
5.25% due September 15, 2024	472	472
5.85% due December 15, 2025	485	485
7.50% due September 15, 2027	73	73
5.25% due October 15, 2027	390	390
5.875% due June 15, 2028	325	325
4.50% due January 15, 2030	585	585
7.875% due September 30, 2031	675	675
7.95% due April 15, 2032	366	366
5.60% due July 15, 2041	1,250	1,250
4.75% due May 15, 2042	750	750
5.00% due June 15, 2045	750	750
Net premium on debentures and notes	115	149
Debt issuance costs	(27)	(30)
Total debt	\$ 6,451	\$ 6,482
Less amount classified as short-term debt	255	—
Total long-term debt	\$ 6,196	\$ 6,482

### Retirement of Senior Notes

In the first nine months of 2021, Devon redeemed \$43 million of the 6.00% senior notes due 2022, \$175 million of the 5.875% senior notes due 2028, \$315 million of the 4.50% senior notes due 2030, \$210 million of the 5.25% senior notes due 2027 and \$500 million of the 5.75% senior notes due 2026. In the first nine months of 2021, Devon recognized \$30 million of gains on early retirement of debt, consisting of \$89 million of non-cash premium accelerations, partially offset by \$59 million of cash retirement costs. The gain on early retirement is included in net financing costs in the consolidated comprehensive statements of earnings.

### Credit Lines

Devon has a \$3.0 billion Senior Credit Facility. As of September 30, 2022, Devon had no outstanding borrowings under the Senior Credit Facility and had issued \$2 million in outstanding letters of credit under this facility. The Senior Credit Facility contains only one material financial covenant. This covenant requires Devon's ratio of total funded debt to total capitalization, as defined in the credit agreement, to be no greater than 65%. Under the terms of the credit agreement, total capitalization is adjusted to add back

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non-cash financial write-downs such as impairments. As of September 30, 2022, Devon was in compliance with this covenant with a debt-to-capitalization ratio of 23.3%.

**Net Financing Costs**

The following schedule includes the components of net financing costs.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Interest based on debt outstanding	\$ 92	\$ 93	\$ 277	\$ 296
Gain on early retirement of debt	—	—	—	(30)
Interest income	(19)	(1)	(22)	(2)
Other	(6)	(6)	(19)	(21)
Total net financing costs	\$ 67	\$ 86	\$ 236	\$ 243

Interest income has increased from 2021 to 2022 primarily due to higher average cash balances and interest rates. Additionally, in the third quarter of 2022, Devon received approximately \$7 million of interest income associated with reimbursements of performance guarantee obligations Devon and WPX paid in 2021 and 2020 on behalf of the purchaser of previously divested assets.

**14. Leases**

The following table presents Devon's right-of-use assets and lease liabilities as of September 30, 2022 and December 31, 2021.

	September 30, 2022			December 31, 2021		
	Finance	Operating	Total	Finance	Operating	Total
Right-of-use assets	\$ 205	\$ 27	\$ 232	\$ 211	\$ 24	\$ 235
Lease liabilities:						
Current lease liabilities <sup>(1)</sup>	\$ 8	\$ 17	\$ 25	\$ 8	\$ 18	\$ 26
Long-term lease liabilities	249	10	259	247	5	252
Total lease liabilities	\$ 257	\$ 27	\$ 284	\$ 255	\$ 23	\$ 278

(1) Current lease liabilities are included in other current liabilities on the consolidated balance sheets.

Devon's right-of-use operating lease assets are for certain leases related to real estate, drilling rigs and other equipment related to the exploration, development and production of oil and gas. Devon's right-of-use financing lease assets are related to real estate.

**15. Asset Retirement Obligations**

The following table presents the changes in Devon's asset retirement obligations.

	Nine Months Ended September 30,	
	2022	2021
Asset retirement obligations as of beginning of period	\$ 485	\$ 369
Liabilities incurred and assumed through acquisitions	62	126
Liabilities settled and divested	(13)	(52)
Revision of estimated obligation	(35)	11
Accretion expense on discounted obligation	18	21
Asset retirement obligations as of end of period	517	475
Less current portion	19	13
Asset retirement obligations, long-term	\$ 498	\$ 462

During the first nine months of 2022, Devon increased its asset retirement obligations by approximately \$38 million due to asset acquisitions in the Eagle Ford and Williston Basin. During this same time period Devon reduced its asset retirement obligations by \$35 million primarily due to extended retirement dates for oil and gas assets, partially offset by inflation-driven increases to current settlement costs. During the first nine months of 2021, Devon assumed \$98 million of WPX asset retirement obligations.

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## 16. Stockholders' Equity

### Share Repurchases

In November 2021, Devon authorized a share repurchase program of \$1.0 billion with a December 31, 2022 expiration date. In February 2022, the Board of Directors authorized an expansion of the share repurchase program to \$1.6 billion, and in May 2022, authorized a further expansion to \$2.0 billion and extended the expiration date to May 4, 2023. The table below provides information regarding purchases of Devon's common stock under the \$2.0 billion share repurchase program (shares in thousands).

	Total Number of Shares Purchased	Dollar Value of Shares Purchased	Average Price Paid per Share
2021:			
Fourth quarter	13,983	\$ 589	\$ 42.15
2022:			
First quarter	3,979	\$ 230	\$ 57.74
Second quarter	5,052	318	\$ 63.07
Third quarter	1,875	113	\$ 59.99
Total plan	24,889	\$ 1,250	\$ 50.23

### Dividends

Upon completion of the Merger, Devon continued its commitment to pay a quarterly dividend at a fixed rate and instituted a variable quarterly dividend, which is dependent on quarterly cash flows, among other factors. Devon raised its fixed quarterly dividend by 45%, to \$0.16 per share, beginning in the first quarter of 2022, and again by 13%, to \$0.18 per share, beginning in the third quarter of 2022. The following table summarizes Devon's fixed and variable dividends for the first nine months of 2022 and 2021, respectively.

	Fixed	Variable	Total	Rate Per Share
2022:				
First quarter	\$ 109	\$ 558	\$ 667	\$ 1.00
Second quarter	105	725	830	\$ 1.27
Third quarter	117	890	1,007	\$ 1.55
Total year-to-date	\$ 331	\$ 2,173	\$ 2,504	
2021:				
First quarter	\$ 76	\$ 127	\$ 203	\$ 0.30
Second quarter	75	154	229	\$ 0.34
Third quarter	74	255	329	\$ 0.49
Total year-to-date	\$ 225	\$ 536	\$ 761	

In November 2022, Devon announced a cash dividend in the amount of \$1.35 per share payable in the fourth quarter of 2022. The dividend consists of an \$0.18 per share fixed quarterly dividend and a \$1.17 per share variable quarterly dividend and will total approximately \$880 million.

### Noncontrolling Interests

The noncontrolling interests' share of CDM's net earnings and the contributions from and distributions to the noncontrolling interests are presented as components of equity.

## 17. Commitments and Contingencies

Devon is party to various legal actions arising in connection with its business. Matters that are probable of unfavorable outcome to Devon and which can be reasonably estimated are accrued. Such accruals are based on information known about the matters, Devon's estimates of the outcomes of such matters and its experience in contesting, litigating and settling similar matters. None of the actions are believed by management to likely involve future amounts that would be material to Devon's financial position or results of operations after consideration of recorded accruals. Actual amounts could differ materially from management's estimates.

**DEVON ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

***Royalty Matters***

Numerous oil and natural gas producers and related parties, including Devon, have been named in various lawsuits alleging royalty underpayments. Devon is currently named as a defendant in a number of such lawsuits, including some lawsuits in which the plaintiffs seek to certify classes of similarly situated plaintiffs. Among the allegations typically asserted in these suits are claims that Devon used below-market prices, made improper deductions, paid royalty proceeds in an untimely manner without including required interest, used improper measurement techniques and entered into gas purchase and processing arrangements with affiliates that resulted in underpayment of royalties in connection with oil, natural gas and NGLs produced and sold. Devon is also involved in governmental agency proceedings and royalty audits and is subject to related contracts and regulatory controls in the ordinary course of business, some that may lead to additional royalty claims.

***Environmental and Climate Change Matters***

Devon's business is subject to numerous federal, state, tribal and local laws and regulations governing the discharge of materials into the environment or otherwise relating to environmental protection. Failure to comply with these laws and regulations may result in the assessment of administrative, civil and criminal fines and penalties, as well as remediation costs. Although Devon believes that it is in substantial compliance with applicable environmental laws and regulations and that continued compliance with existing requirements will not have a material adverse impact on its business, there can be no assurance that this will continue in the future.

Beginning in 2013, various parishes in Louisiana filed suit against numerous oil and gas companies, including Devon, alleging that the companies' operations and activities in certain fields violated the State and Local Coastal Resource Management Act of 1978, as amended, and caused substantial environmental contamination, subsidence and other environmental damages to land and water bodies located in the coastal zone of Louisiana. The plaintiffs' claims against Devon relate primarily to the operations of several of Devon's corporate predecessors. The plaintiffs seek, among other things, payment of the costs necessary to clear, re-vegetate and otherwise restore the allegedly impacted areas. Although Devon cannot predict the ultimate outcome of these matters, Devon intends to vigorously defend against these claims.

The State of Delaware and various municipalities and other governmental and private parties in California have filed legal proceedings against numerous oil and gas companies, including Devon, seeking relief to abate alleged impacts of climate change. These proceedings include far-reaching claims for monetary damages and injunctive relief. Although Devon cannot predict the ultimate outcome of these matters, Devon intends to vigorously defend against the proceedings.

***Other Indemnifications and Legacy Matters***

Pursuant to various sale agreements relating to divested businesses and assets, Devon has indemnified various purchasers against liabilities that they may incur with respect to the businesses and assets acquired from Devon. Additionally, federal, state and other laws in areas of former operations may require previous operators (including corporate successors of previous operators) to perform or make payments in certain circumstances where the current operator may no longer be able to satisfy the applicable obligation. Such obligations may include plugging and abandoning wells, removing production facilities or performing requirements under surface agreements in existence at the time of disposition.

In November 2020, the Department of the Interior, Bureau of Safety and Environmental Enforcement ordered several oil and gas operators, including Devon, to perform decommissioning and reclamation activities related to two California offshore oil and gas production platforms and related facilities. The current operator and owner of the platforms contends that it does not have the financial ability to perform these obligations and relinquished the related federal lease in October 2020. In response to the apparent insolvency of the current operator, the government has ordered the former operators and alleged former lease record title owners to decommission the platforms and related facilities. The government contends that an alleged corporate predecessor of Devon owned a partial interest in the subject lease and platforms. Although Devon cannot predict the ultimate outcome of this matter, Devon denies any obligation to decommission the subject platforms, has appealed the order, and believes any decommissioning obligation related to the subject platforms should be assumed by others.

**DEVON ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

**18. Fair Value Measurements**

The following table provides carrying value and fair value measurement information for certain of Devon's financial assets and liabilities. The carrying values of cash, accounts receivable, other current receivables, accounts payable, other current payables, accrued expenses and lease liabilities included in the accompanying consolidated balance sheets approximated fair value at September 30, 2022 and December 31, 2021, as applicable. Therefore, such financial assets and liabilities are not presented in the following table.

	Carrying Amount	Total Fair Value	Fair Value Measurements Using:		
			Level 1 Inputs	Level 2 Inputs	Level 3 Inputs
September 30, 2022 assets (liabilities):					
Cash equivalents	\$ 648	\$ 648	\$ 648	\$ —	\$ —
Commodity derivatives	\$ 159	\$ 159	\$ —	\$ 159	\$ —
Commodity derivatives	\$ (155)	\$ (155)	\$ —	\$ (155)	\$ —
Debt	\$ (6,451)	\$ (6,063)	\$ —	\$ (6,063)	\$ —
Contingent earnout payments	\$ 129	\$ 129	\$ —	\$ —	\$ 129
December 31, 2021 assets (liabilities):					
Cash equivalents	\$ 1,421	\$ 1,421	\$ 1,421	\$ —	\$ —
Commodity derivatives	\$ 8	\$ 8	\$ —	\$ 8	\$ —
Commodity derivatives	\$ (577)	\$ (577)	\$ —	\$ (577)	\$ —
Debt	\$ (6,482)	\$ (7,644)	\$ —	\$ (7,644)	\$ —
Contingent earnout payments	\$ 184	\$ 184	\$ —	\$ —	\$ 184

The following methods and assumptions were used to estimate the fair values in the table above.

**Level 1 Fair Value Measurements**

*Cash equivalents* – Amounts consist primarily of money market investments and the fair value approximates the carrying value.

**Level 2 Fair Value Measurements**

*Commodity derivatives* – The fair value of commodity derivatives is estimated using internal discounted cash flow calculations based upon forward curves and data obtained from independent third parties for contracts with similar terms or data obtained from counterparties to the agreements.

*Debt* – Devon's debt instruments do not consistently trade actively in an established market. The fair values of its debt are estimated based on rates available for debt with similar terms and maturity when active trading is not available.

**Level 3 Fair Value Measurements**

*Contingent Earnout Payments* – Devon has the right to receive contingent consideration related to the Barnett and non-core Rockies asset divestitures based on future oil and gas prices. These values were derived using a Monte Carlo valuation model and qualify as a level 3 fair value measurement. For additional information, see [Note 2](#).

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion and analysis addresses material changes in our results of operations for the three-month and nine-month periods ended September 30, 2022 compared to previous periods, and in our financial condition and liquidity since December 31, 2021. For information regarding our critical accounting policies and estimates, see our [2021 Annual Report on Form 10-K](#) under "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations."

### **Executive Overview**

Looking across our 2021 and 2022 performance, the Merger has helped us become a leading unconventional oil producer in the U.S., with an asset base underpinned by premium acreage in the economic core of the Delaware Basin. This strategic combination accelerated our transition to a cash-return business model, including the implementation of a fixed plus variable dividend strategy. In the third quarter of 2022, we acquired additional producing properties and leasehold interests in both the Williston Basin and Eagle Ford that are complementary to our existing acreage, offer operational synergies and add high-quality inventory. And, our diverse portfolio balances exposure to oil and natural gas prices with access to premium markets to improve realized pricing.

We remain focused on building economic value by executing on our strategic priorities of moderating production growth, emphasizing capital and operational efficiencies, optimizing reinvestment rates to maximize free cash flow, maintaining low leverage, delivering cash returns to our shareholders and pursuing ESG excellence. Our recent performance highlights for these priorities include the following items:

- Third quarter oil production totaled 294 MBbls/d, exceeding our plan by 1%.
- As of September 30, 2022, completed approximately 63% of our authorized \$2.0 billion share repurchase program, with approximately 25 million of our common shares repurchased for approximately \$1.3 billion, or \$50.23 per share, since inception of the plan.
- Exited the third quarter with \$4.3 billion of liquidity, including \$1.3 billion of cash, with no debt maturities until the third quarter of 2023.
- Generated \$2.1 billion of operating cash flow in the third quarter of 2022 and \$6.6 billion in the first nine months of 2022.
- Including variable dividends, paid dividends of approximately \$2.5 billion in the first nine months of 2022 and have declared \$880 million of dividends to be paid in the fourth quarter of 2022.

We remain committed to capital discipline and delivering the objectives that underpin our current plan. Those objectives prioritize value creation through moderated capital investment and production growth, particularly with a view of the backwardation in commodity prices, supply chain constraints and the economic uncertainty arising from recent geopolitical events.

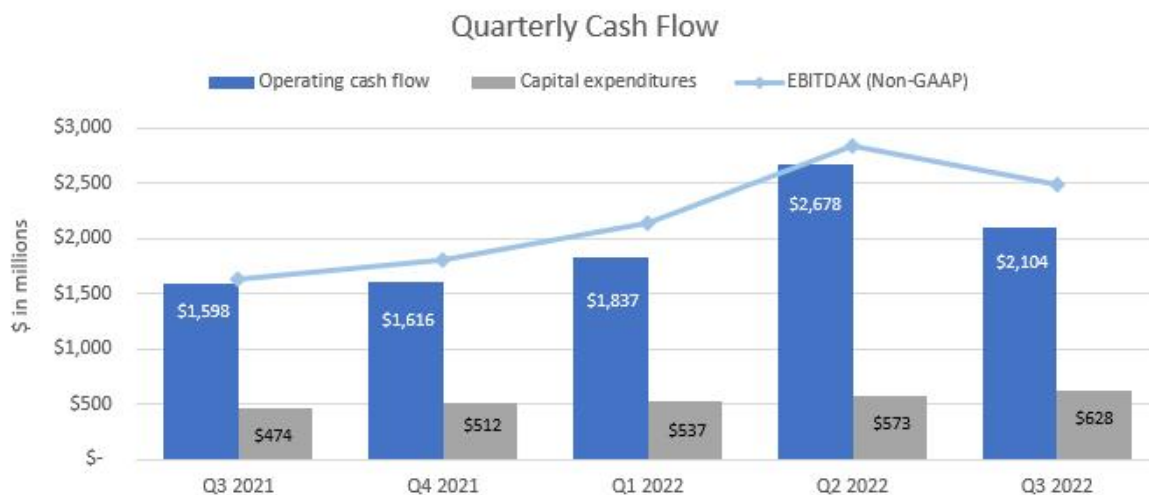
Commodity prices strengthened throughout 2021 and oil prices have continued to remain high in the first nine months of 2022, which has significantly improved our earnings and cash flow generation. The increase in commodity prices during 2021 was primarily driven by increased demand resulting from the initial recovery from the COVID-19 pandemic. The military conflict between Russia and Ukraine and related economic sanctions imposed on Russia, as well as OPEC+ restraining production growth, have further exacerbated supply shortages, causing oil prices to increase even more during the first nine months of 2022.

Trends of our quarterly earnings, operating cash flow, EBITDAX and capital expenditures are shown below. “Core earnings” and “EBITDAX” are financial measures not prepared in accordance with GAAP. For a description of these measures, including reconciliations to the comparable GAAP measures, see “Non-GAAP Measures” in this Item 2.



Our earnings remained relatively flat from the second quarter of 2022 to the third quarter of 2022. Lower oil prices were offset by an increase in gas prices and improvements to the valuation of our commodity hedge positions.

Our net earnings in recent quarters have been significantly impacted by non-cash adjustments to the value of our commodity hedges. Net earnings in the fourth quarter of 2021, second quarter of 2022 and third quarter of 2022 each included a hedge valuation gain, net of tax of \$0.4 billion, \$0.2 billion and \$0.5 billion, respectively. Net earnings in the first quarter of 2022 included a hedge valuation loss, net of tax of \$0.3 billion. Excluding these amounts, our core earnings have consistently risen over recent quarters, but decreased in the third quarter of 2022 due to a drop in crude oil prices and continue to trend upward while remaining sensitive to volatile commodity prices.



Like earnings, our operating cash flow is sensitive to volatile commodity prices. We have continued to deliver strong cash flow and EBITDAX results primarily due to improved commodity prices and overall market conditions as well as strong operating performance.



We exited the third quarter of 2022 with \$4.3 billion of liquidity, comprised of \$1.3 billion of cash and \$3.0 billion of available credit under our Senior Credit Facility. We currently have \$6.5 billion of debt outstanding with no maturities until August 2023. We currently have approximately 30% of both our anticipated remaining 2022 oil and gas production hedged and approximately 25% and 15% of our anticipated 2023 oil and gas production hedged, respectively. These contracts consist of collars and swaps based off the WTI oil benchmark and the Henry Hub and NYMEX last day natural gas indices. Additionally, we have entered into regional basis swaps in an effort to protect price realizations across our portfolio.

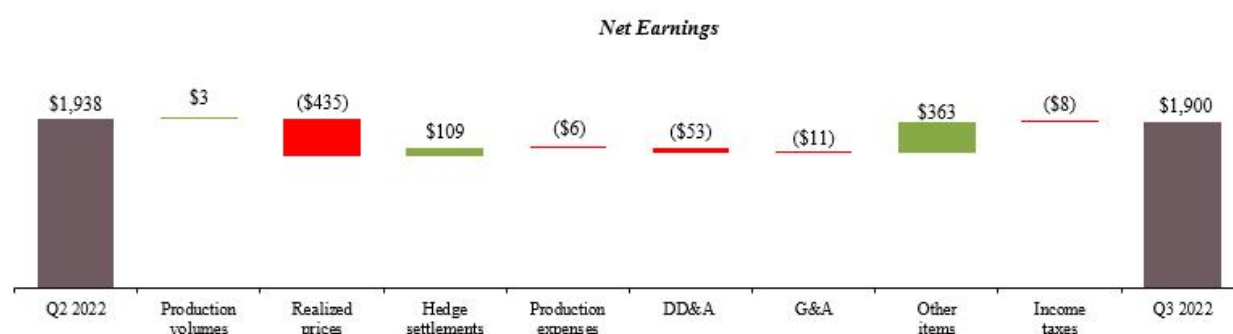
As commodity prices and our operating performance strengthen and bolster our financial condition, we have authorized opportunistic repurchases of up to \$2.0 billion of our common shares with an expiration date of May 4, 2023. We repurchased approximately 1.9 million shares in the third quarter of 2022 for approximately \$113 million, or \$59.99 per share. As of September 30, 2022, we have repurchased approximately 25 million shares for approximately \$1.3 billion, or \$50.23 per share, since the inception of the program. Additionally, we continue funding our fixed plus variable dividends, which totaled \$2.5 billion in the first nine months of 2022. We recently declared a dividend payable in the fourth quarter of 2022 for \$880 million and increased our fixed dividend by 13% beginning in the third quarter of 2022.

## Results of Operations

The following graphs, discussion and analysis are intended to provide an understanding of our results of operations and current financial condition. To facilitate the review, these numbers are being presented before consideration of noncontrolling interests.

### Q3 2022 vs. Q2 2022

Our third quarter and second quarter net earnings were each \$1.9 billion. The graph below shows the change in net earnings from the second quarter of 2022 to the third quarter of 2022. The material changes are further discussed by category on the following pages.



### Production Volumes

	Q3 2022	% of Total	Q2 2022	Change
<b>Oil (MBbls/d)</b>				
Delaware Basin	210	71 %	222	-6 %
Anadarko Basin	13	5 %	14	-3 %
Williston Basin	35	12 %	27	30 %
Eagle Ford	19	7 %	19	2 %
Powder River Basin	13	4 %	14	-7 %
Other	4	1 %	4	-5 %
Total	294	100 %	300	-2 %
<b>Gas (MMcf/d)</b>				
Delaware Basin	623	62 %	618	1 %
Anadarko Basin	224	23 %	212	5 %
Williston Basin	71	7 %	52	37 %
Eagle Ford	63	6 %	60	4 %
Powder River Basin	18	2 %	18	-1 %
Other	1	0 %	1	0 %
Total	1,000	100 %	961	4 %

	Q3 2022	% of Total	Q2 2022	Change
<b>NGLs (MBbls/d)</b>				
Delaware Basin	108	70 %	111	-3 %
Anadarko Basin	27	17 %	25	7 %
Williston Basin	8	5 %	9	-17 %
Eagle Ford	9	6 %	9	-1 %
Powder River Basin	2	2 %	2	0 %
Other	—	0 %	—	N/M
Total	154	100 %	156	-1 %

	Q3 2022	% of Total	Q2 2022	Change
<b>Combined (MBoe/d)</b>				
Delaware Basin	421	68 %	436	-3 %
Anadarko Basin	77	13 %	74	4 %
Williston Basin	55	9 %	45	22 %
Eagle Ford	39	6 %	38	2 %
Powder River Basin	18	3 %	19	-5 %
Other	4	1 %	4	3 %
Total	614	100 %	616	0 %

From the second quarter of 2022 to the third quarter of 2022, the change in volumes had a negligible impact to earnings. The slight decrease in volumes was primarily due to downtime in the Delaware Basin during the third quarter which was partially offset by increased volumes in the Williston Basin due to the acquisition that closed in July 2022. We expect Eagle Ford volumes to increase approximately 35 MBoe/d in the fourth quarter due to the acquisition which closed in September 2022.

### Realized Prices

	Q3 2022	Realization	Q2 2022	Change
<b>Oil (per Bbl)</b>				
WTI index	\$ 91.87		\$ 108.70	-15 %
Realized price, unhedged	\$ 92.98	101%	\$ 108.93	-15 %
Cash settlements	\$ (8.60)		\$ (13.13)	
Realized price, with hedges	\$ 84.38	92%	\$ 95.80	-12 %

	Q3 2022	Realization	Q2 2022	Change
<b>Gas (per Mcf)</b>				
Henry Hub index	\$ 8.20		\$ 7.17	14 %
Realized price, unhedged	\$ 7.25	88%	\$ 6.37	14 %
Cash settlements	\$ (1.42)		\$ (1.31)	
Realized price, with hedges	\$ 5.83	71%	\$ 5.06	15 %

	Q3 2022	Realization	Q2 2022	Change
<b>NGLs (per Bbl)</b>				
WTI index	\$ 91.87		\$ 108.70	-15 %
Realized price, unhedged	\$ 34.44	37%	\$ 40.28	-14 %
Cash settlements	\$ —		\$ —	
Realized price, with hedges	\$ 34.44	37%	\$ 40.28	-14 %

	Q3 2022	Q2 2022	Change
<b>Combined (per Boe)</b>			
Realized price, unhedged	\$ 64.89	\$ 73.13	-11 %
Cash settlements	\$ (6.41)	\$ (8.43)	
Realized price, with hedges	\$ 58.48	\$ 64.70	-10 %

From the second quarter of 2022 to the third quarter of 2022, realized prices contributed to a \$435 million decrease in earnings. Unhedged realized oil and NGL prices decreased primarily due to lower WTI and Mont Belvieu index prices. These decreases were partially offset by an increase in unhedged realized gas prices which was primarily due to a higher Henry Hub index price. Combined realized prices were also negatively impacted by hedge cash settlements related to oil and gas commodities.

We currently have approximately 30% of both our anticipated remaining 2022 oil and gas production hedged and approximately 25% and 15% of our anticipated 2023 oil and gas production hedged, respectively.

### Hedge Settlements

	Q3 2022	Q2 2022	Change
Oil	\$ (233)	\$ (358)	35 %
Natural gas	(130)	(114)	-14 %
Total cash settlements <sup>(1)</sup>	<u>\$ (363)</u>	<u>\$ (472)</u>	23 %

(1) Included as a component of oil, gas and NGL derivatives on the consolidated statements of comprehensive earnings.

Cash settlements as presented in the tables above represent realized gains or losses related to the instruments described in [Note 3](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

### Production Expenses

	Q3 2022	Q2 2022	Change
LOE	\$ 284	\$ 255	11 %
Gathering, processing & transportation	177	177	0 %
Production taxes	252	278	-9 %
Property taxes	22	19	16 %
Total	<u>\$ 735</u>	<u>\$ 729</u>	1 %
Per Boe:			
LOE	\$ 5.02	\$ 4.56	10 %
Gathering, processing & transportation	\$ 3.13	\$ 3.15	-1 %
Percent of oil, gas and NGL sales:			
Production taxes	6.9 %	6.8 %	1 %

LOE increased from the second quarter to the third quarter of 2022 primarily due to rising costs resulting from inflation. This increase was partially offset by a decrease in production taxes resulting from lower commodity prices.

### Field-Level Cash Margin

The table below presents the field-level cash margin for each of our operating areas. Field-level cash margin is computed as oil, gas and NGL sales less production expenses and is not a measure defined by GAAP. A reconciliation to the comparable GAAP measures is found in “Non-GAAP Measures” in this Item 2. The changes in production volumes, realized prices and production expenses, shown above, had the following impact on our field-level cash margins by asset.

	Q3 2022	\$ per BOE	Q2 2022	\$ per BOE
<b>Field-level cash margin (Non-GAAP)</b>				
Delaware Basin	\$ 2,100	\$ 54.20	\$ 2,511	\$ 63.32
Anadarko Basin	284	\$ 40.09	277	\$ 41.15
Williston Basin	242	\$ 47.95	224	\$ 54.56
Eagle Ford	185	\$ 51.82	206	\$ 59.71
Powder River Basin	97	\$ 58.81	119	\$ 68.41
Other	25	N/M	34	N/M
Total	<u>\$ 2,933</u>	\$ 51.90	<u>\$ 3,371</u>	\$ 60.12

### DD&A

	Q3 2022	Q2 2022	Change
Oil and gas per Boe	\$ 9.89	\$ 9.02	10 %
Oil and gas	\$ 559	\$ 506	10 %
Other property and equipment	22	22	3 %
Total	<u>\$ 581</u>	<u>\$ 528</u>	10 %

### General and Administrative Expense

	Q3 2022	Q2 2022	Change
G&A per Boe	\$ 1.69	\$ 1.51	12 %
Labor and benefits	\$ 54	\$ 44	23 %
Non-labor	41	40	3 %
Total	<u>\$ 95</u>	<u>\$ 84</u>	<u>13 %</u>

G&A increased in the third quarter due to an increase in labor and benefit costs.

### Other Items

	Q3 2022	Q2 2022	Change in earnings
Commodity hedge valuation changes <sup>(1)</sup>	\$ 611	\$ 302	\$ 309
Marketing and midstream operations	(9)	(4)	(5)
Exploration expenses	4	10	6
Asset dispositions	—	(14)	(14)
Net financing costs	67	84	17
Other, net	(40)	10	50
			<u>\$ 363</u>

(1) Included as a component of oil, gas and NGL derivatives on the consolidated statements of comprehensive earnings.

We recognize fair value changes on our oil, gas and NGL derivative instruments in each reporting period. The changes in fair value resulted from new positions and settlements that occurred during each period, as well as the relationship between contract prices and the associated forward curves. For additional information, see [Note 3](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

Net financing costs decreased primarily due to an increase in interest income resulting from an increase in interest rates. Additionally, in the third quarter of 2022, Devon received approximately \$7 million of interest income associated with reimbursements of performance guarantee obligations Devon and WPX paid in 2020 and 2021 on behalf of the purchaser of previously divested assets. See [Note 6](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report for additional information regarding this item.

For discussion on other, net, see [Note 6](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

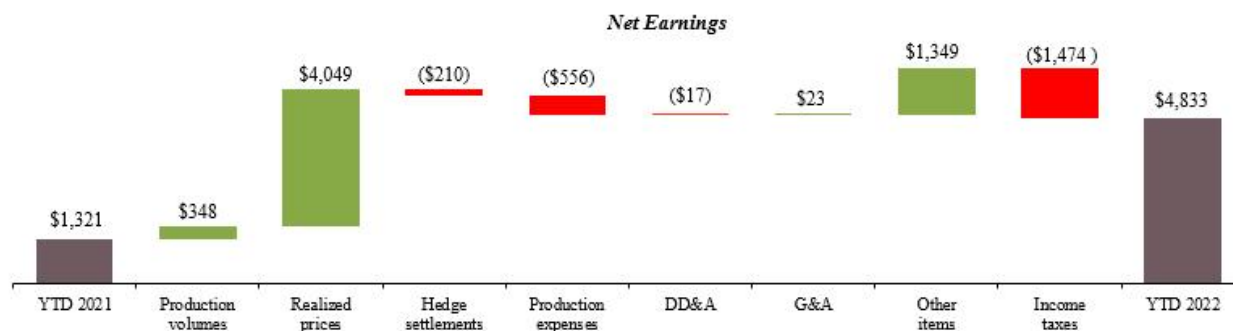
### Income Taxes

	Q3 2022	Q2 2022
Current expense	\$ 120	\$ 252
Deferred expense	445	305
Total expense	<u>\$ 565</u>	<u>\$ 557</u>
Effective income tax rate	<u>23 %</u>	<u>22 %</u>

For discussion on income taxes, see [Note 7](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

### September 30, YTD 2022 vs. September 30, YTD 2021

Our nine months ended September 30, 2022 net earnings were \$4.8 billion, compared to net earnings of \$1.3 billion for the first nine months ended September 30, 2021. The graph below shows the change in net earnings from the nine months ended September 30, 2021 to the nine months ended September 30, 2022. The material changes are further discussed by category on the following pages.



### Production Volumes

	Nine Months Ended September 30,			
	2022	% of Total	2021	Change
<b>Oil (MBbls/d)</b>				
Delaware Basin	214	73 %	192	11 %
Anadarko Basin	14	5 %	14	-5 %
Williston Basin	31	11 %	43	-27 %
Eagle Ford	18	6 %	18	1 %
Powder River Basin	13	4 %	16	-17 %
Other	4	1 %	4	-8 %
Total	294	100 %	287	2 %

	Nine Months Ended September 30,			
	2022	% of Total	2021	Change
<b>Gas (MMcf/d)</b>				
Delaware Basin	601	63 %	521	15 %
Anadarko Basin	215	23 %	215	0 %
Williston Basin	59	6 %	56	5 %
Eagle Ford	62	6 %	57	7 %
Powder River Basin	18	2 %	21	-11 %
Other	1	0 %	2	-51 %
Total	956	100 %	872	10 %

	Nine Months Ended September 30,			
	2022	% of Total	2021	Change
<b>NGLs (MBbls/d)</b>				
Delaware Basin	104	70 %	81	28 %
Anadarko Basin	26	17 %	24	7 %
Williston Basin	8	6 %	9	-8 %
Eagle Ford	9	6 %	9	3 %
Powder River Basin	2	1 %	3	-16 %
Other	—	0 %	—	N/M
Total	149	100 %	126	18 %

	Nine Months Ended September 30,			
	2022	% of Total	2021	Change
<b>Combined (MBoe/d)</b>				
Delaware Basin	417	69 %	360	16 %
Anadarko Basin	75	13 %	74	1 %
Williston Basin	50	8 %	61	-19 %
Eagle Ford	38	6 %	36	3 %
Powder River Basin	18	3 %	22	-16 %
Other	4	1 %	5	-16 %
Total	<u>602</u>	<u>100 %</u>	<u>558</u>	8 %

From the nine months ended 2021 to the nine months ended 2022, the change in volumes contributed to a \$348 million increase in earnings. The increase in volumes was primarily due to continued development in the Delaware Basin which was partially offset by natural declines in the Williston Basin and Powder River Basin. Due to the acquisition of additional assets that closed in July 2022, Williston Basin volumes did increase to 55 MBoe/d in the third quarter of 2022 and are expected to continue to increase. Additionally, we expect Eagle Ford volumes to increase approximately 35 MBoe/d in the fourth quarter due to the acquisition which closed in September 2022.

### Realized Prices

	Nine Months Ended September 30,			
	2022	Realization	2021	Change
<b>Oil (per Bbl)</b>				
WTI index	\$ 98.34		\$ 64.85	52 %
Realized price, unhedged	\$ 98.39	100%	\$ 62.69	57 %
Cash settlements	\$ (11.02 )		\$ (11.06 )	
Realized price, with hedges	<u>\$ 87.37</u>	89%	<u>\$ 51.63</u>	69 %

	Nine Months Ended September 30,			
	2022	Realization	2021	Change
<b>Gas (per Mcf)</b>				
Henry Hub index	\$ 6.78		\$ 3.19	113 %
Realized price, unhedged	\$ 5.86	86%	\$ 2.93	100 %
Cash settlements	\$ (1.12 )		\$ (0.38 )	
Realized price, with hedges	<u>\$ 4.74</u>	70%	<u>\$ 2.55</u>	86 %

	Nine Months Ended September 30,			
	2022	Realization	2021	Change
<b>NGLs (per Bbl)</b>				
WTI index	\$ 98.34		\$ 64.85	52 %
Realized price, unhedged	\$ 37.48	38%	\$ 27.11	38 %
Cash settlements	\$ —		\$ (0.32 )	
Realized price, with hedges	<u>\$ 37.48</u>	38%	<u>\$ 26.79</u>	40 %

	Nine Months Ended September 30,			
	2022		2021	Change
<b>Combined (per Boe)</b>				
Realized price, unhedged	\$ 66.60		\$ 42.94	55 %
Cash settlements	\$ (7.17 )		\$ (6.35 )	
Realized price, with hedges	<u>\$ 59.43</u>		<u>\$ 36.59</u>	62 %

From the nine months ended 2021 to the nine months ended 2022, realized prices contributed to a \$4.0 billion increase in earnings. Unhedged realized oil, gas and NGL prices increased primarily due to higher WTI, Henry Hub and Mont Belvieu index prices. The increase in index prices was partially offset by hedge cash settlements related to oil and gas commodities.

### Hedge Settlements

	Nine Months Ended September 30,		
	2022	2021	Change
Oil	\$ (884)	\$ (868)	-2 %
Natural gas	(295)	(90)	-228 %
NGL	—	(11)	N/M
Total cash settlements <sup>(1)</sup>	\$ (1,179)	\$ (969)	-22 %

(1) Included as a component of oil, gas and NGL derivatives on the consolidated statements of comprehensive earnings.

Cash settlements as presented in the tables above represent realized gains or losses related to the instruments described in [Note 3](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

### Production Expenses

	Nine Months Ended September 30,		
	2022	2021	Change
LOE	\$ 763	\$ 624	22 %
Gathering, processing & transportation	515	433	19 %
Production taxes	744	436	71 %
Property taxes	60	33	82 %
Total	\$ 2,082	\$ 1,526	36 %
Per Boe:			
LOE	\$ 4.65	\$ 4.09	13 %
Gathering, processing & transportation	\$ 3.13	\$ 2.84	10 %
Percent of oil, gas and NGL sales:			
Production taxes	6.8 %	6.7 %	2 %

Production expenses increased primarily due to higher volumes and inflation, as well as an increase in production and property taxes resulting from higher commodity prices.

### Field-Level Cash Margin

The table below presents the field-level cash margin for each of our operating areas. Field-level cash margin is computed as oil, gas and NGL sales less production expenses and is not a measure defined by GAAP. A reconciliation to the comparable GAAP measures is found in “Non-GAAP Measures” in this Item 2. The changes in production volumes, realized prices and production expenses, shown above, had the following impact on our field-level cash margins by asset.

	Nine Months Ended September 30,			
	2022	\$ per BOE	2021	\$ per BOE
<b>Field-level cash margin (Non-GAAP)</b>				
Delaware Basin	\$ 6,488	\$ 57.01	\$ 3,477	\$ 35.41
Anadarko Basin	765	\$ 37.24	404	\$ 19.93
Williston Basin	673	\$ 49.87	550	\$ 32.91
Eagle Ford	549	\$ 53.56	325	\$ 32.74
Powder River Basin	302	\$ 60.65	210	\$ 35.53
Other	84	N/M	54	N/M
Total	\$ 8,861	\$ 53.93	\$ 5,020	\$ 32.93

### DD&A

	Nine Months Ended September 30,		
	2022	2021	Change
Oil and gas per Boe	\$ 9.30	\$ 9.84	-6 %
Oil and gas	\$ 1,528	\$ 1,500	2 %
Other property and equipment	70	81	-14 %
Total	\$ 1,598	\$ 1,581	1 %

DD&A increased primarily due to higher volumes which was partially offset by lower DD&A rates. The decrease in DD&A

rates was primarily due to increases to oil, gas and NGL reserve estimates at December 31, 2021, resulting from higher prices.

### General and Administrative Expense

	Nine Months Ended September 30,		
	2022	2021	Change
G&A per Boe	\$ 1.67	\$ 1.94	-14 %
Labor and benefits	\$ 156	\$ 197	-21 %
Non-labor	117	99	18 %
Total	<u>\$ 273</u>	<u>\$ 296</u>	-8 %

General and administrative expenses have decreased primarily due to synergies resulting from the Merger.

### Other Items

	Nine Months Ended September 30,		
	2022	2021	Change in earnings
Commodity hedge valuation changes <sup>(1)</sup>	\$ 574	\$ (597)	\$ 1,171
Marketing and midstream operations	(17)	(19)	2
Exploration expenses	16	9	(7)
Asset dispositions	(15)	(119)	(104)
Net financing costs	236	243	7
Restructuring and transaction costs	—	230	230
Other, net	(91)	(41)	50
			<u>\$ 1,349</u>

(1) Included as a component of oil, gas and NGL derivatives on the consolidated statements of comprehensive earnings.

We recognize fair value changes on our oil, gas and NGL derivative instruments in each reporting period. The changes in fair value resulted from new positions and settlements that occurred during each period, as well as the relationship between contract prices and the associated forward curves. For additional information, see [Note 3](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

Asset dispositions include \$65 million and \$35 million in the first nine months of 2021 related to the re-valuation of contingent earnout payments associated with our divested Barnett Shale assets and the sale of non-core assets in the Rockies, respectively. For additional information, see [Note 2](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

Restructuring and transaction costs in the first nine months of 2021 reflect workforce reductions in conjunction with the Merger, as well as various transaction costs related to the Merger. For additional information, see [Note 5](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

For discussion on other, net, see [Note 6](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

### Income Taxes

	Nine Months Ended September 30,	
	2022	2021
Current expense	\$ 475	\$ 15
Deferred expense (benefit)	914	(100)
Total expense (benefit)	<u>\$ 1,389</u>	<u>\$ (85)</u>
Effective income tax rate	<u>22 %</u>	<u>(7 %)</u>

For discussion on income taxes, see [Note 7](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.



## Capital Resources, Uses and Liquidity

### Sources and Uses of Cash

The following table presents the major changes in cash and cash equivalents for the three and nine months ended September 30, 2022 and 2021.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Operating cash flow	\$ 2,104	\$ 1,598	\$ 6,619	\$ 3,283
WPX acquired cash	—	—	—	344
Acquisitions of property and equipment	(2,465)	(10)	(2,566)	(15)
Divestitures of property and equipment	4	1	39	65
Capital expenditures	(628)	(474)	(1,738)	(1,477)
Investment activity, net	(9)	9	(29)	27
Debt activity, net	—	—	—	(1,302)
Repurchases of common stock	(126)	—	(661)	—
Common stock dividends	(1,007)	(329)	(2,504)	(761)
Noncontrolling interest activity, net	(9)	(5)	(22)	(35)
Other	(11)	(8)	(99)	(45)
Net change in cash, cash equivalents and restricted cash	\$ (2,147)	\$ 782	\$ (961)	\$ 84
Cash, cash equivalents and restricted cash at end of period	\$ 1,310	\$ 2,321	\$ 1,310	\$ 2,321

### Operating Cash Flow

As presented in the table above, net cash provided by operating activities continued to be a significant source of capital and liquidity. Operating cash flow more than doubled during the nine months ended September 30, 2022 compared to the nine months ended September 30, 2021. The increase was primarily due to significantly increased commodity prices as well as higher volumes for the first nine months of 2022 compared to 2021.

### Acquisitions of Property and Equipment

During the first nine months of 2022, we paid \$2.6 billion toward acquisitions of producing properties and leasehold interests located in the Eagle Ford and Williston Basin, which were completed in the third quarter of 2022. For additional information, please see [Note 2](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

### Divestitures of Property and Equipment

During the first nine months of 2022 and 2021, we received contingent earnout payments related to assets previously sold. For additional information, please see [Note 2](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

### Capital Expenditures

The amounts in the table below reflect cash payments for capital expenditures, including cash paid for capital expenditures incurred in prior periods.

	Three Months Ended September 30,		Nine months Ended September 30,	
	2022	2021	2022	2021
Delaware Basin	\$ 409	\$ 375	\$ 1,216	\$ 1,150
Anadarko Basin	50	11	92	29
Williston Basin	48	13	87	59
Eagle Ford	36	45	95	88
Powder River Basin	52	13	113	53
Other	2	1	8	1
Total oil and gas	597	458	1,611	1,380
Midstream	17	5	74	53
Other	14	11	53	44
Total capital expenditures	\$ 628	\$ 474	\$ 1,738	\$ 1,477

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Capital expenditures consist primarily of amounts related to our oil and gas exploration and development operations, midstream operations and other corporate activities. Our capital investment program is driven by a disciplined allocation process focused on moderating our production growth and maximizing our returns. As such, our capital expenditures for the first nine months of 2022 represent approximately 25% of our operating cash flow.

*Investment Activity*

During the first nine months of 2022 and 2021, Devon received distributions from our investments of \$30 million and \$27 million, respectively. Devon contributed \$59 million to our investments during the first nine months of 2022.

*Debt Activity*

Subsequent to the Merger closing, we redeemed \$1.2 billion of senior notes in the first nine months of 2021. We also paid \$59 million of cash retirement costs related to these redemptions.

*Shareholder Distributions and Stock Activity*

We repurchased approximately 11 million shares of common stock for \$661 million in the first nine months of 2022 under the share repurchase program authorized by our Board of Directors. For additional information, see [Note 16](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

The following table summarizes our common stock dividends during the third quarter and first nine months of 2022 and 2021. In February 2022, our Board of Directors increased our fixed dividend rate by 45% to \$0.16 per share and again by 13% to \$0.18 per share beginning in the third quarter of 2022. In addition to the fixed quarterly dividend, we paid a variable dividend in the first, second and third quarters of 2022 and 2021.

	Fixed	Variable	Total	Rate Per Share
2022:				
First quarter	\$ 109	\$ 558	\$ 667	\$ 1.00
Second quarter	105	725	830	\$ 1.27
Third quarter	117	890	1,007	\$ 1.55
Total year-to-date	<u>\$ 331</u>	<u>\$ 2,173</u>	<u>\$ 2,504</u>	
2021:				
First quarter	\$ 76	\$ 127	\$ 203	\$ 0.30
Second quarter	75	154	229	\$ 0.34
Third quarter	74	255	329	\$ 0.49
Total year-to-date	<u>\$ 225</u>	<u>\$ 536</u>	<u>\$ 761</u>	

*Noncontrolling Interest Activity, net*

During the first nine months of 2022 and 2021, we distributed \$22 million and \$15 million, respectively, to our noncontrolling interests in CDM. During the first nine months of 2021, we received contributions of \$4 million related to our noncontrolling interests in CDM.

In the first quarter of 2021, we paid \$24 million to purchase the noncontrolling interest portion of a partnership that WPX had formed to acquire minerals in the Delaware Basin.

*Liquidity*

The business of exploring for, developing and producing oil and natural gas is capital intensive. Because oil, natural gas and NGL reserves are a depleting resource, we, like all upstream operators, must continually make capital investments to grow and even sustain production. Generally, our capital investments are focused on drilling and completing new wells and maintaining production from existing wells. At opportunistic times, we also acquire operations and properties from other operators or landowners to enhance our existing portfolio of assets.

Historically, our primary sources of capital funding and liquidity have been our operating cash flow, cash on hand and asset divestiture proceeds. Additionally, we maintain a commercial paper program, supported by our revolving line of credit, which can be accessed as needed to supplement operating cash flow and cash balances. If needed, we can also issue debt and equity securities, including through transactions under our shelf registration statement filed with the SEC. We estimate the combination of our sources

of capital will continue to be adequate to fund our planned capital requirements as discussed in this section as well as accelerate our cash-return business model.

#### *Operating Cash Flow*

Key inputs into determining our planned capital investment are the amount of cash we hold and operating cash flow we expect to generate over the next one to three or more years. At the end of the third quarter of 2022, we held approximately \$1.3 billion of cash. Our operating cash flow forecasts are sensitive to many variables and include a measure of uncertainty as actual results may differ from our expectations.

*Commodity Prices* – The most uncertain and volatile variables for our operating cash flow are the prices of the oil, gas and NGLs we produce and sell. Prices are determined primarily by prevailing market conditions. Regional and worldwide economic activity, weather and other highly variable factors influence market conditions for these products. These factors, which are difficult to predict, create volatility in prices and are beyond our control.

To mitigate some of the risk inherent in prices, we utilize various derivative financial instruments to protect a portion of our production against downside price risk. The key terms to our oil, gas and NGL derivative financial instruments as of September 30, 2022 are presented in [Note 3](#) in “Part I. Financial Information – Item 1. Financial Statements” of this report.

Further, when considering the current commodity price environment and our current hedge position, we expect to achieve our capital investment priorities. Additionally, we remain committed to capital discipline and focused on delivering the objectives that underpin our capital plan for 2022. We will continue to prioritize economic value over growing volumes, which is driven partially by current commodity price backwardation, supply chain constraints and economic uncertainty arising from recent geopolitical events.

*Operating Expenses* – Commodity prices can also affect our operating cash flow through an indirect effect on operating expenses. Significant commodity price decreases can lead to a decrease in drilling and development activities. As a result, the demand and cost for people, services, equipment and materials may also decrease, causing a positive impact on our cash flow as the prices paid for services and equipment decline. However, the inverse is also generally true during periods of rising commodity prices, which is what we are currently experiencing in 2022. Furthermore, the COVID-19 pandemic has contributed to disruption and volatility in our supply chain, which has resulted, and may continue to result in labor shortages, increased costs and delays for pipe and other materials needed for our operations.

*Credit Losses* – Our operating cash flow is also exposed to credit risk in a variety of ways. This includes the credit risk related to customers who purchase our oil, gas and NGL production, the collection of receivables from our joint interest owners for their proportionate share of expenditures made on projects we operate and counterparties to our derivative financial contracts. We utilize a variety of mechanisms to limit our exposure to the credit risks of our customers, partners and counterparties. Such mechanisms include, under certain conditions, requiring letters of credit, prepayments or cash collateral postings.

#### *Credit Availability*

As of September 30, 2022, we had approximately \$3.0 billion of available borrowing capacity under our Senior Credit Facility. This credit facility supports our \$3.0 billion of short-term credit under our commercial paper program. At September 30, 2022, there were no borrowings under our commercial paper program, and we were in compliance with the Senior Credit Facility’s financial covenant.

#### *Debt Ratings*

We receive debt ratings from the major ratings agencies in the U.S. In determining our debt ratings, the agencies consider a number of qualitative and quantitative items including, but not limited to, commodity pricing levels, our liquidity, asset quality, reserve mix, debt levels, cost structure, planned asset sales and size and scale of our production. Our credit rating from Standard and Poor’s Financial Services is BBB with a stable outlook. Our credit rating from Fitch is BBB+ with a stable outlook. Our credit rating from Moody’s Investor Service is Baa2 with a stable outlook. Any rating downgrades may result in additional letters of credit or cash collateral being posted under certain contractual arrangements.

There are no “rating triggers” in any of our contractual debt obligations that would accelerate scheduled maturities should our debt rating fall below a specified level. However, a downgrade could adversely impact our interest rate on any credit facility borrowings and the ability to economically access debt markets in the future.

### *Fixed Plus Variable Dividend*

We are committed to a “fixed plus variable” dividend strategy. Our Board of Directors will consider a number of factors when setting the quarterly dividend, if any, including a general target of paying out approximately 10% of operating cash flow through the fixed dividend. Our Board of Directors increased our quarterly fixed dividend rate by 45% to \$0.16 per share in February 2022 and again by 13% to \$0.18 per share beginning in August 2022. In addition to the fixed quarterly dividend, we may pay a variable dividend of up to 50% of our excess free cash flow, which is a non-GAAP measure. Each quarter’s excess free cash flow is computed as operating cash flow (a GAAP measure) before balance sheet changes, less capital expenditures and the fixed dividend. The declaration and payment of any future dividend, whether fixed or variable, will remain at the full discretion of our Board of Directors and will depend on our financial results, cash requirements, future prospects and other factors deemed relevant by the Board.

In November 2022, Devon announced a cash dividend in the amount of \$1.35 per share payable in the fourth quarter of 2022. The dividend consists of an \$0.18 per share fixed quarterly dividend and a \$1.17 per share variable quarterly dividend and will total approximately \$880 million.

### *Share Repurchases*

In May 2022, our Board of Directors increased our share repurchase program by \$0.4 billion to a total authorized amount of \$2.0 billion, and extended the expiration date to May 4, 2023. Through October 2022, we had executed \$1.3 billion of the authorized program.

### *Capital Expenditures*

Our exploration and development budget for the fourth quarter of 2022 is expected to range from approximately \$800 million to \$900 million.

## **Critical Accounting Estimates**

### *Income Taxes*

The amount of income taxes recorded requires interpretations of complex rules and regulations of federal, state, provincial and foreign tax jurisdictions. We recognize current tax expense based on estimated taxable income for the current period and the applicable statutory tax rates. We routinely assess potential uncertain tax positions and, if required, estimate and establish accruals for such amounts. We have recognized deferred tax assets and liabilities for temporary differences, operating losses and other tax carryforwards. We routinely assess our deferred tax assets and reduce such assets by a valuation allowance if we deem it is more likely than not that some portion or all of the deferred tax assets will not be realized.

Further, in the event we were to undergo an “ownership change” (as defined in Section 382 of the Internal Revenue Code of 1986, as amended), our ability to use net operating losses and tax credits generated prior to the ownership change may be limited. Generally, an “ownership change” occurs if one or more shareholders, each of whom owns five percent or more in value of a corporation’s stock, increase their aggregate percentage ownership by more than 50 percent over the lowest percentage of stock owned by those shareholders at any time during the preceding three-year period. Based on currently available information, we do not believe an ownership change has occurred during 2022 for Devon, but the Merger did cause an ownership change for WPX and increased the likelihood Devon could experience an ownership change over the next two years.

For additional information regarding our critical accounting policies and estimates, see our [2021 Annual Report on Form 10-K](#).

## **Non-GAAP Measures**

We make reference to “core earnings attributable to Devon” and “core earnings per share attributable to Devon” in “Executive Overview” in this Item 2 that are not required by or presented in accordance with GAAP. These non-GAAP measures are not alternatives to GAAP measures and should not be considered in isolation or as a substitute for analysis of our results reported under GAAP. Core earnings attributable to Devon, as well as the per share amount, represent net earnings excluding certain non-cash and other items that are typically excluded by securities analysts in their published estimates of our financial results. Our non-GAAP measures are typically used as a quarterly performance measure. Amounts excluded relate to asset dispositions, non-cash asset impairments (including non-cash unproved asset impairments), deferred tax asset valuation allowance, changes in tax legislation, fair

value changes in derivative financial instruments, costs associated with early retirement of debt and restructuring and transaction costs associated with the workforce reductions described further in [Note 5](#).

We believe these non-GAAP measures facilitate comparisons of our performance to earnings estimates published by securities analysts. We also believe these non-GAAP measures can facilitate comparisons of our performance between periods and to the performance of our peers.

Below are reconciliations of core earnings and core earnings per share attributable to Devon to comparable GAAP measures.

	Three Months Ended September 30,				Nine Months Ended September 30,			
	Before Tax	After Tax	After NCI	Per Diluted Share	Before Tax	After Tax	After NCI	Per Diluted Share
<b>2022</b>								
Earnings attributable to Devon (GAAP)	\$ 2,465	\$ 1,900	\$ 1,893	\$ 2.88	\$ 6,222	\$ 4,833	\$ 4,814	\$ 7.28
Adjustments:								
Asset dispositions	—	—	—	—	(15)	(12)	(12)	(0.02)
Asset and exploration impairments	1	1	1	—	9	7	7	0.01
Deferred tax asset valuation allowance	—	(1)	(1)	—	—	15	15	0.02
Fair value changes in financial instruments	(604)	(464)	(464)	(0.70)	(565)	(433)	(433)	(0.65)
Core earnings attributable to Devon (Non-GAAP)	<u>\$ 1,862</u>	<u>\$ 1,436</u>	<u>\$ 1,429</u>	<u>\$ 2.18</u>	<u>\$ 5,651</u>	<u>\$ 4,410</u>	<u>\$ 4,391</u>	<u>\$ 6.64</u>
<b>2021</b>								
Earnings attributable to Devon (GAAP)	\$ 964	\$ 844	\$ 838	\$ 1.24	\$ 1,236	\$ 1,321	\$ 1,307	\$ 1.95
Adjustments:								
Asset dispositions	—	—	—	—	(119)	(91)	(91)	(0.13)
Asset and exploration impairments	1	1	1	—	3	2	2	—
Deferred tax asset valuation allowance	—	(101)	(101)	(0.15)	—	(479)	(479)	(0.71)
Change in tax legislation	—	—	—	—	—	62	62	0.09
Fair value changes in financial instruments	(31)	(23)	(23)	(0.04)	597	460	460	0.68
Restructuring and transaction costs	18	18	18	0.03	230	201	201	0.29
Early retirement of debt	—	—	—	—	(30)	(23)	(23)	(0.03)
Core earnings attributable to Devon (Non-GAAP)	<u>\$ 952</u>	<u>\$ 739</u>	<u>\$ 733</u>	<u>\$ 1.08</u>	<u>\$ 1,917</u>	<u>\$ 1,453</u>	<u>\$ 1,439</u>	<u>\$ 2.14</u>

#### **EBITDAX and Field-Level Cash Margin**

To assess the performance of our assets, we use EBITDAX and Field-Level Cash Margin. We compute EBITDAX as net earnings before income tax expense; financing costs, net; exploration expenses; DD&A; asset impairments; asset disposition gains and losses; non-cash share-based compensation; non-cash valuation changes for derivatives and financial instruments; restructuring and transaction costs; accretion on discounted liabilities; and other items not related to our normal operations. Field-Level Cash Margin is computed as oil, gas and NGL sales less production expenses. Production expenses consist of lease operating, gathering, processing and transportation expenses, as well as production and property taxes.

We exclude financing costs from EBITDAX to assess our operating results without regard to our financing methods or capital structure. Exploration expenses and asset disposition gains and losses are excluded from EBITDAX because they generally are not indicators of operating efficiency for a given reporting period. DD&A and impairments are excluded from EBITDAX because capital expenditures are evaluated at the time capital costs are incurred. We exclude share-based compensation, valuation changes, restructuring and transaction costs, accretion on discounted liabilities and other items from EBITDAX because they are not considered a measure of asset operating performance.

We believe EBITDAX and Field-Level Cash Margin provide information useful in assessing our operating and financial performance across periods. EBITDAX and Field-Level Cash Margin as defined by Devon may not be comparable to similarly titled measures used by other companies and should be considered in conjunction with net earnings from operations.

Below are reconciliations of net earnings to EBITDAX and a further reconciliation to Field-Level Cash Margin.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>Net earnings (GAAP)</b>	\$ 1,900	\$ 844	\$ 4,833	\$ 1,321
Financing costs, net	67	86	236	243
Income tax expense (benefit)	565	120	1,389	(85)
Exploration expenses	4	3	16	9
Depreciation, depletion and amortization	581	578	1,598	1,581
Asset dispositions	—	—	(15)	(119)
Share-based compensation	22	18	64	58
Derivative and financial instrument non-cash valuation changes	(613)	(35)	(576)	597
Restructuring and transaction costs	—	18	—	230
Accretion on discounted liabilities and other	(38)	2	(89)	(41)
<b>EBITDAX (Non-GAAP)</b>	<u>2,488</u>	<u>1,634</u>	<u>7,456</u>	<u>3,794</u>
Marketing and midstream revenues and expenses, net	9	(1)	17	19
Commodity derivative cash settlements	363	370	1,179	969
General and administrative expenses, cash-based	73	77	209	238
<b>Field-level cash margin (Non-GAAP)</b>	<u>\$ 2,933</u>	<u>\$ 2,080</u>	<u>\$ 8,861</u>	<u>\$ 5,020</u>

**Item 3. *Quantitative and Qualitative Disclosures About Market Risk***

**Commodity Price Risk**

As of September 30, 2022, we have commodity derivatives that pertain to a portion of our estimated production for the last three months of 2022, as well as for 2023 and 2024. The key terms to our open oil, gas and NGL derivative financial instruments are presented in [Note 3](#) in “Part I. Financial Information – Item 1. Financial Statements” in this report.

The fair values of our commodity derivatives are largely determined by the forward curves of the relevant price indices. At September 30, 2022, a 10% change in the forward curves associated with our commodity derivative instruments would have changed our net positions by approximately \$185 million.

**Interest Rate Risk**

As of September 30, 2022, we had total debt of \$6.5 billion. All of our debt is based on fixed interest rates averaging 5.8%.

**Foreign Currency Risk**

We had no material foreign currency risk at September 30, 2022.

**Item 4. *Controls and Procedures***

**Disclosure Controls and Procedures**

We have established disclosure controls and procedures to ensure that material information relating to Devon, including its consolidated subsidiaries, is made known to the officers who certify Devon’s financial reports and to other members of senior management and the Board of Directors.

Based on their evaluation, our principal executive and principal financial officers have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) were effective as of September 30, 2022 to ensure that the information required to be disclosed by Devon in the reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms.

**Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II. Other Information****Item 1. Legal Proceedings**

We are involved in various legal proceedings incidental to our business. However, to our knowledge as of the date of this report and subject to the environmental matters noted in Part I, Item 3. Legal Proceedings of our [2021 Annual Report on Form 10-K](#), there were no material pending legal proceedings to which we are a party or to which any of our property is subject.

As previously disclosed, WPX Energy, Inc., a wholly-owned subsidiary of the Company, received a notice of violation on April 7, 2020 from the EPA relating to specific historical air emission events occurring on the Fort Berthold Indian Reservation in North Dakota. On July 22, 2022, we received an updated notice of violation from the EPA relating to the same underlying events. The Company has been engaging with the EPA to resolve this matter. Although this matter is ongoing and management cannot predict its ultimate outcome, the resolution of this matter may result in a fine or penalty in excess of \$0.3 million.

Please see our [2021 Annual Report on Form 10-K](#) and other SEC filings for additional information.

**Item 1A. Risk Factors**

There have been no material changes to the information included in Item 1A. "Risk Factors" in our [2021 Annual Report on Form 10-K](#).

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

The following table provides information regarding purchases of our common stock that were made by us during the third quarter of 2022 (shares in thousands).

Period	Total Number of Shares Purchased <sup>(1)</sup>	Average Price Paid per Share	Total Number of Shares Purchased As Part of Publicly Announced Plans or Programs	Maximum Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs <sup>(2)</sup>
July 1 - July 31	932	\$ 52.51	921	\$ 814
August 1 - August 31	583	\$ 66.46	575	\$ 776
September 1 - September 30	388	\$ 68.13	379	\$ 750
Total	1,903	\$ 59.97	1,875	

- (1) In addition to shares purchased under the share repurchase program described below, these amounts also include approximately 28 thousand shares received by us from employees for the payment of personal income tax withholdings on vesting transactions.
- (2) On November 2, 2021, we announced a \$1.0 billion share repurchase program with an expiration date of December 31, 2022. In February 2022, we announced the expansion of this program to \$1.6 billion, and in May 2022, we announced a further expansion to \$2.0 billion and extended the expiration date to May 4, 2023. In the third quarter of 2022, we repurchased 1.9 million common shares for \$113 million, or \$59.99 per share, under this share repurchase program. For additional information, see [Note 16](#) in "Part I. Financial Information – Item 1. Financial Statements" in this report.

**Item 3. Defaults Upon Senior Securities**

Not applicable.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

On October, 28, 2022, the Board of Directors (the "Board") of the Registrant amended and restated the Registrant's bylaws (as amended and restated, the "Bylaws"), effective as of October 28, 2022. The Bylaws include revisions that, among other things, (1) clarify or update provisions relating to stockholder meetings, including the applicable voting standard, who may call a special meeting of stockholders, and adjournments; (2) add provisions relating to the universal proxy card rule adopted by the SEC for meetings of stockholders at which directors are to be elected; (3) conform provisions concerning the list of stockholders to recent changes in Delaware law; (4) clarify the manner in which the Registrant may give notice to stockholders and add provisions relating to the effect of attempted delivery by the Registrant of notices to stockholders; and (5) revise the description of the officer positions identified in the Bylaws.



The foregoing description of the Bylaws does not purport to be complete and is subject to and qualified in its entirety by reference to the Bylaws, a copy of which is attached as Exhibit 3.1 to this report and which is incorporated by reference herein.

**Item 6. Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
3.1	<a href="#">Registrant's Bylaws.</a>
31.1	<a href="#">Certification of principal executive officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2	<a href="#">Certification of principal financial officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1	<a href="#">Certification of principal executive officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2	<a href="#">Certification of principal financial officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS	Inline XBRL Instance Document – the XBRL Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Labels Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DEVON ENERGY CORPORATION

Date: November 2, 2022

/s/ Jeremy D. Humphers

Jeremy D. Humphers

*Senior Vice President and Chief Accounting Officer*



**BYLAWS  
OF  
DEVON ENERGY CORPORATION  
(As amended and restated on October 28, 2022)**

**ARTICLE I  
OFFICES**

**Section 1. Registered Office.** The registered office of Devon Energy Corporation ("the Corporation") shall be in the City of Wilmington, County of New Castle, State of Delaware.

**Section 2. Principal Office.** The principal place of business of Devon Energy Corporation shall be in Oklahoma City, Oklahoma.

**Section 3. Other Offices.** The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

**ARTICLE II  
MEETINGS OF STOCKHOLDERS**

**Section 1. Place of Meetings.** Meetings of the stockholders for the election of directors or for any other purpose shall be held at the principal office of the Corporation or at such other place, either within or without the State of Delaware as shall be designated from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but instead may be held solely by means of remote communication.

**Section 2. Annual Meetings.** The meeting of stockholders for the election of directors shall be held annually on such date as shall be designated by the Board of Directors. The Board of Directors shall designate the place and time for the holding of the meeting, and at least 10 days' notice of the place and time of the meeting shall be given to the stockholders.

**Section 3. Special Meetings.** Unless otherwise required by law, special meetings of stockholders, for any purpose or purposes, may be called only (i) pursuant to the certificate of incorporation of the Corporation, as amended and restated from time to time (including any certificates of designation with respect to any Preferred Stock, the "Certificate of Incorporation"), or (ii) with the concurrence of a majority of the then-authorized number of directors of the Corporation, by the Chair of the Board or the President or Chief Executive Officer of the Corporation.

**Section 4. Notice.** Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given by the Corporation which shall state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders or proxyholders may be deemed to be present and vote at such meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, the written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting.

**Section 5. Participation by Remote Communication.** For any meeting of stockholders, the Board of Directors may, in its sole discretion, allow stockholders and proxyholders not physically present at a meeting of stockholders to participate by means of remote communication at such meeting and to be deemed present in person and vote at the meeting of stockholders whether the meeting is to be held at a designated place, solely by means of remote communication, or a combination of both means. For any meeting of stockholders for which the Board of Directors has authorized participation by means of remote communication, the Corporation shall (i) implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) maintain a record of any vote or other action taken by a stockholder or proxyholder at such meeting by means of remote communication.

**Section 6. Adjournments.** Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and, unless otherwise required by law and subject to the provisions hereof, notice need not be given of any such adjourned meeting if the time, place, if any, thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present and vote at such adjourned meeting are (i) announced at the meeting at which the adjournment is taken, (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication, or (iii) set forth in the notice of meeting given in accordance Section 4 of this Article II of these Bylaws. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 7. Quorum.** Unless otherwise required by law or the Certificate of Incorporation, the presence in person, by proxy or by means of remote communication (if authorized by the Board of Directors as provided in Section 5) of holders of a majority of the voting power of the then-outstanding shares of Voting Stock (as defined in the Certificate of Incorporation) on the record date, shall constitute a quorum at all meetings of the stockholders for the transaction of

business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chair of the meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 6, until a quorum shall be present or represented.

**Section 8. Voting.** Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, any matter brought before any meeting of stockholders shall be decided by the affirmative vote of the majority of shares present in person, by proxy, or by means of remote communication (if authorized by the Board of Directors as provided in Section 5) and entitled to vote on the subject matter, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 6 of Article V hereof, each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote on the subject matter held by such stockholder. Such votes may be cast in person, by proxy, or by means of remote communication (if authorized by the Board of Directors as provided in Section 5), but no proxy shall be voted or acted upon after three years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

**Section 9. Nature of Business at Meetings of Stockholders; Director Nominations.**

**(A) Annual Meeting of Stockholders.**

(1) Nominations of persons for election to the Board of Directors of the Corporation (except as otherwise provided in the Certificate of Incorporation with respect to directors to be elected by the holders of any class or series of Preferred Stock) may be made at an annual meeting of stockholders only (a) by or at the direction of the Board of Directors, (b) by any stockholder of the Corporation who is entitled to vote at the meeting, who has complied with all applicable procedures set forth in clause (A)(3) and clause (D) of this Section 9, and who was a stockholder of record at the time the required notice is delivered to the Secretary of the Corporation and on the record date for the determination of stockholders certified to vote at such meeting or (c) by any Eligible Stockholder (as defined in clause (C)(4) of this Section 9) who has complied with all applicable procedures set forth in clause (C) and clause (D) of this Section 9.

(2) The proposal of business to be considered by the stockholders (other than nominations of persons for election to the Board of Directors, which may only be made in accordance with clause (A)(1) of this Section 9) may be made at an annual meeting of stockholders only (a) as specified in the Corporation's notice of meeting delivered pursuant to Article II, Section 4 of these Bylaws given by or at the direction of the Board of Directors, (b) otherwise by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation who is entitled to vote at the meeting, who has complied with all applicable procedures set forth in

clause (A)(3) and clause (D) of this Section 9, and who was a stockholder of record at the time the required notice is delivered to the Secretary of the Corporation and on the record date for the determination of stockholders certified to vote at such meeting.

(3) In addition to any other applicable requirements, for nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (A)(1)(b) or clause (A)(2)(c) of this Section 9, as applicable, the stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation, and in the case of business other than nominations, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered by hand or by registered U.S. mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to, and received by, the Secretary at the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is not within 30 days before or after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the 90<sup>th</sup> day prior to such annual meeting and not later than the close of business on the later of the 70<sup>th</sup> day prior to such annual meeting or the 10<sup>th</sup> day following the day on which public announcement of the date of such meeting is first made. To be in proper written form, such stockholder's notice must set forth or be accompanied by the information, representations and other documents required by clause (D)(5) of this Section 9.

**(B) Special Meetings of Stockholders.**

(1) Business transacted at any special meeting of stockholders shall be limited to (i) in the case of a special meeting called other than by the stockholders pursuant to a Special Meeting Request (as defined below), the purpose(s) set forth in the Corporation's notice of meeting pursuant to Article II, Section 4 of these Bylaws and (ii) in the case of a special meeting called by the Secretary as a result of a valid Special Meeting Request received from Requesting Stockholders (as defined below) having the Requisite Ownership (as defined below), the purpose(s) stated in such Special Meeting Request and any other matters that the Board of Directors determines to include in the Corporation's notice of the special meeting pursuant to Article II, Section 4 of these Bylaws.

(2) For purposes of determining whether the requisite record holders have delivered written notice to call a special meeting of the stockholders pursuant to and in accordance with Article VI of the Certificate of Incorporation (a "Special Meeting Request"), a stockholder of record or a beneficial owner, as the case may be, shall be deemed to own the shares of stock of the Corporation that such stockholder or, if such stockholder is a nominee, custodian or other agent that is



holding the shares on behalf of another person (the “beneficial owner”), that such beneficial owner would be deemed to own pursuant to Rule 200(b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), excluding any shares as to which such stockholder or beneficial owner, as the case may be, does not have the right to vote or direct the vote at the special meeting.

(3) A Special Meeting Request must be delivered by hand or by registered U.S. mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to the attention of the Secretary at the principal executive offices of the Corporation. A Special Meeting Request shall be valid only if it (i) is signed and dated by each stockholder of record submitting the Special Meeting Request and the beneficial owners, if any, on whose behalf the Special Meeting Request is being made, or such stockholder’s or beneficial owner’s duly authorized agent (each, a “Requesting Stockholder”), (ii) includes the information, representations and other documents required by clause (D)(5) of this Section 9, (iii) is accompanied by documentary evidence that the Requesting Stockholders own the requisite percentage of shares, and have held such shares for such period, as required by the Certificate of Incorporation (the “Requisite Ownership”) as of the date on which the Special Meeting Request is delivered to the Secretary; provided, however, that if the Requesting Stockholders are not the beneficial owners of the shares representing such Requisite Ownership, then to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the Secretary within 10 days after the date on which the Special Meeting Request is delivered to the Secretary, provided that the Special Meeting Request shall not be deemed received unless and until such documentary evidence is provided to the Secretary within such period) that the beneficial owners on whose behalf the Special Meeting Request is made beneficially own such Requisite Ownership as of the date on which such Special Meeting Request is delivered to the Secretary and (iv) contains an agreement by the Requesting Stockholders to notify the Corporation promptly in the event of any disposition prior to the special meeting of shares of the Corporation owned of record or beneficially owned and an acknowledgement that any such disposition shall be deemed to be a revocation of such Special Meeting Request with respect to such disposed shares.

(4) A Special Meeting Request shall not be valid, and a special meeting requested by stockholders shall not be held, if (i) the Special Meeting Request or the Requesting Stockholders do not comply with clauses (B) and (D) of this Section 9; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; (iii) the Special Meeting Request is delivered during the period commencing 120 days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the earlier of (x) the date of the next annual meeting

and (y) 30 days after the first anniversary of the date of the previous annual meeting; (iv) an identical or substantially similar item (as determined in good faith by the Board, a "Similar Item"), other than the election of directors, was presented at an annual or special meeting of stockholders held not more than 12 months before the Special Meeting Request is delivered; (v) a Similar Item was presented at an annual or special meeting of stockholders held not more than 120 days before the Special Meeting Request is delivered (and, for purposes of this clause (v), the election of directors shall be deemed to be a "Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); (vi) a Similar Item is included in the Corporation's notice of meeting as an item of business to be brought before an annual or special meeting of stockholders that has been called but not yet held or that is called for a date within 120 days of the receipt by the Corporation of a Special Meeting Request; or (vii) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A of the Exchange Act or other applicable law.

(5) Special meetings of stockholders shall be held at such place, on such date, and at such time as the Board of Directors shall fix; provided, however, that the special meeting shall not be held more than 120 days after receipt by the Corporation of a valid Special Meeting Request.

(6) The Requesting Stockholders may revoke a Special Meeting Request by written revocation delivered to Secretary at the principal executive offices of the Corporation at any time prior to the special meeting. If, following such revocation (or deemed revocation pursuant to clause (B)(3)(iv) of this Section 9), there are unrevoked requests from Requesting Stockholders holding in the aggregate less than the Requisite Ownership, the Board of Directors, in its discretion, may cancel the special meeting.

(7) If none of the Requesting Stockholders appears or sends a duly authorized agent to present the business to be presented for consideration specified in the Special Meeting Request, the Corporation need not present such business for a vote at the special meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(8) Nominations of persons for election to the Board of Directors at a special meeting called for the purpose of electing directors other than pursuant to a Special Meeting Request may be made only (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation who is entitled to vote at the meeting, who has complied with all applicable procedures set forth in clause (B)(9) and clause (D) of this Section 9 and who was a stockholder of record at the time the required notice is delivered to the Secretary of the Corporation and on

the record date for the determination of stockholders certified to vote at such meeting.

(9) In addition to any other applicable requirements, for nominations to be made by a stockholder pursuant to clause (B)(8)(b) of this Section 9, the stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered by hand or by registered U.S. mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to, and received by, the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10<sup>th</sup> day following the day on which public announcement is first made of the date of the special meeting. To be in proper written form, such stockholder's notice must set forth or be accompanied by the information, representations and other documents required by clause (D)(5) of this Section 9.

**(C) Proxy Access for Director Nominations.**

(1) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this clause (C), the Corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at the direction of the Board of Directors, the name, together with the Required Information (as defined below), of any person nominated for election to the Board of Directors pursuant to this clause (C) (a "Stockholder Nominee") by an Eligible Stockholder who expressly elects at the time of providing the notice required by this clause (C) to have such nominee included in the Corporation's proxy materials pursuant to this clause (C). For purposes of this clause (C), the "Required Information" that the Corporation will include in its proxy statement is (a) the information provided to the Secretary of the Corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, and (b) if the Eligible Stockholder so elects, a Supporting Statement (as defined in clause (C)(8)). For the avoidance of doubt, nothing in this clause (C) shall limit the Corporation's ability to solicit against any Stockholder Nominee or include in its proxy materials the Corporation's own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to the Corporation pursuant to this clause (C). Subject to the provisions of this clause (C), the name of any Stockholder Nominee included in the Corporation's proxy statement for an annual meeting of stockholders shall also be set forth on the form of proxy distributed by the Corporation in connection with such annual meeting.

(2) In addition to any other applicable requirements, for a nomination to be made by an Eligible Stockholder pursuant to this clause (C), the Eligible

Stockholder must have given timely notice thereof (the “Notice of Proxy Access Nomination”) in proper written form to the Secretary of the Corporation. To be timely, the Notice of Proxy Access Nomination must be delivered by hand or by registered U.S. mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to, and received by, the Secretary at the principal executive offices of the Corporation not less than 120 days nor more than 150 days prior to the first anniversary of the date that the Corporation first distributed its proxy statement to stockholders for the preceding year’s annual meeting of stockholders.

(3) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation’s proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (a) two or (b) 20% of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this clause (C) (the “Final Proxy Access Nomination Date”) or, if such amount is not a whole number, the closest whole number below 20% (such greater number, the “Permitted Number”). In the event that one or more vacancies for any reason occurs on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. For purposes of determining when the Permitted Number has been reached, each of the following persons shall be counted as one of the Stockholder Nominees: (i) any individual nominated by an Eligible Stockholder for inclusion in the Corporation’s proxy materials pursuant to this clause (C) whose nomination is subsequently withdrawn, (ii) any individual nominated by an Eligible Stockholder for inclusion in the Corporation’s proxy materials pursuant to this clause (C) whom the Board of Directors decides to nominate for election to the Board of Directors, (iii) any director in office as of the Final Proxy Access Nomination Date who was included in the Corporation’s proxy materials as a Stockholder Nominee for any of the two preceding annual meetings of stockholders (including any individual counted as a Stockholder Nominee pursuant to the immediately preceding clause (ii)) and whose re-election at the upcoming annual meeting of stockholders is being recommended by the Board of Directors, and (iv) any individual for whom the Corporation shall have received notice (whether or not subsequently withdrawn) that a stockholder intends to nominate such individual for election to the Board of Directors pursuant to clause (A)(1)(b) of this Section 9. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation’s proxy materials pursuant to this clause (C) shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation’s proxy materials in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to

this clause (C) exceeds the Permitted Number. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this clause (C) exceeds the Permitted Number, the highest ranking Stockholder Nominee who meets the requirements of this clause (C) from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of Voting Stock of the Corporation each Eligible Stockholder disclosed as Owned in its Notice of Proxy Access Nomination. If the Permitted Number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this clause (C) from each Eligible Stockholder has been selected, then the next highest ranking Stockholder Nominee who meets the requirements of this clause (C) from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(4) An "Eligible Stockholder" is a stockholder or a group of no more than 20 stockholders (counting as one stockholder, for this purpose, any two or more funds that are part of the same Qualifying Fund Group (as defined below)) that (a) has Owned (as defined in clause (C)(5)) continuously for at least three years (the "Minimum Holding Period") a number of shares of Voting Stock of the Corporation that represents at least three percent of the voting power of the outstanding shares of Voting Stock as of the date the Notice of Proxy Access Nomination is delivered to or mailed and received by the Secretary of the Corporation in accordance with this clause (C) (the "Required Shares"), (b) continues to Own the Required Shares through the date of the annual meeting and (c) satisfies all of the other requirements of this clause (C). A "Qualifying Fund Group" is any two or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) a "group of investment companies" as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended. Whenever the Eligible Stockholder consists of a group of stockholders (including a group of funds that are part of the same Qualifying Fund Group), (x) each provision in this clause (C) that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund within a Qualifying Fund Group) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has Owned continuously for the Minimum Holding Period in order to meet the three percent Ownership requirement of the "Required Shares" definition) and (y) a breach of any obligation, agreement or representation under this clause (C) by any member of such group shall be deemed a breach by the Eligible Stockholder. No person may

be a member of more than one group of stockholders constituting an Eligible Stockholder with respect to any annual meeting.

(5) For purposes of this clause (C), a stockholder shall be deemed to “Own” only those outstanding shares of Voting Stock of the Corporation as to which the stockholder possesses both (a) the full voting and investment rights pertaining to the shares and (b) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (a) and (b) shall not include any shares (i) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (ii) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell, or (iii) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar instrument or agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding capital stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, such stockholder’s or its affiliates’ full right to vote or direct the voting of any such shares or (y) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. For purposes of this clause (C), a beneficial owner shall be considered a “stockholder” and shall “Own” shares held in the name of a nominee or other intermediary so long as such person retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder’s Ownership of shares shall be deemed to continue during any period in which (I) the stockholder has loaned such shares, provided that the stockholder has the power to recall such loaned shares on five business days’ notice and includes with its Notice of Proxy Access Nomination an agreement that it (A) will promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the Corporation’s proxy materials and (B) will continue to hold such shares through the date of the annual meeting, or (II) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the stockholder. The terms “Owned,” “Owning” and other variations of the word “Own” shall have correlative meanings. Whether outstanding shares of Voting Stock of the Corporation are “Owned” for these purposes shall be determined by the Board of Directors. For purposes of this clause (C), the term “affiliate” or “affiliates” shall have the meaning ascribed thereto under the General Rules and Regulations of the Exchange Act.

(6) To be in proper written form, the Notice of Proxy Access Nomination must set forth or be accompanied by the following:

- (a) A written statement by the Eligible Stockholder setting forth and certifying as to the number of shares of Voting Stock it Owns and has Owned continuously for the Minimum Holding Period;
- (b) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Notice of Proxy Access Nomination is delivered to or mailed and received by the Secretary of the Corporation in accordance with this clause (C), the Eligible Stockholder Owns, and has Owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide, within five business days following the later of the record date for the determination of stockholders certified to vote at the annual meeting and the date notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Stockholder's continuous Ownership of the Required Shares through the record date;
- (c) a copy of the Schedule 14N that has been or is concurrently being filed with the United States Securities and Exchange Commission (the "SEC") as required by Rule 14a-18 of the Exchange Act;
- (d) the information, representations and other documents required by clause (D)(5) of this Section 9 (including the written consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected and the written representation and agreement of each Stockholder Nominee required by clause (D)(8) of this Section 9);
- (e) a representation and agreement that the Eligible Stockholder (i) will continue to hold the Required Shares through the date of the annual meeting, (ii) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and does not presently have such intent, (iii) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) it is nominating pursuant to this clause (C), (iv) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) of the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of

Directors, (v) has not distributed and will not distribute to any stockholder of the Corporation any form of proxy for the annual meeting other than the form distributed by the Corporation, (vi) has complied and will comply with all laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting and (vii) has provided and will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(f) an undertaking that the Eligible Stockholder agrees to (i) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation, (ii) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this clause (C) or any solicitation or other activity in connection therewith, and (iii) file with the SEC any solicitation or other communication with the stockholders of the Corporation relating to the meeting at which its Stockholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act;

(g) in the case of a nomination by an Eligible Stockholder consisting of a group of stockholders, the designation by all group members of one member of the group that is authorized to receive communications, notices and inquiries from the Corporation and to act on behalf of all members of the group with respect to all matters relating to the nomination under this clause (C) (including withdrawal of the nomination); and

(h) in the case of a nomination by an Eligible Stockholder in which two or more funds that are part of the same Qualifying Fund Group are counted as one stockholder for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the Corporation that demonstrates that the funds are part of the same Qualifying Fund Group.



(7) In addition to the information required pursuant to clause (C)(6) or any other provision of these Bylaws, the Corporation may require (a) any proposed Stockholder Nominee to furnish such other information as may be requested pursuant to clause (D)(6) of this Section 9, and (b) any Eligible Stockholder to furnish any other information that may reasonably be requested by the Corporation to verify the Eligible Stockholder's continuous Ownership of the Required Shares for the Minimum Holding Period and through the date of the annual meeting.

(8) The Eligible Stockholder may, at its option, provide to the Secretary of the Corporation, at the time the Notice of Proxy Access Nomination is provided, a written statement in support of the candidacy of its Stockholder Nominee(s) (a "Supporting Statement"), which Supporting Statement shall not exceed 500 words with respect to each Stockholder Nominee. Only one Supporting Statement may be submitted by an Eligible Stockholder (including any group of stockholders together constituting an Eligible Stockholder) in support of its Stockholder Nominee(s). Notwithstanding anything to the contrary contained in this clause (C), the Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law, rule or regulation.

(9) In the event that any information or communications provided by an Eligible Stockholder or a Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct in all material respects or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any such defect and of the information that is required to correct any such defect. Without limiting the foregoing, an Eligible Stockholder must provide immediate notice to the Corporation if the Eligible Stockholder ceases to Own any of the Required Shares prior to the date of the annual meeting. In addition, any person providing any information to the Corporation pursuant to this clause (C) shall further update and supplement such information as provided in clause (D)(7) of this Section 9. For the avoidance of doubt, no notification, update or supplement provided pursuant to this clause (C)(9) shall be deemed to cure any defect in any previously provided information or communications or limit the remedies available to the Corporation relating to any such defect (including the right to omit a Stockholder Nominee from its proxy materials pursuant to this clause (C)).

(10) Notwithstanding anything to the contrary contained in this clause (C), the Corporation shall not be required to include in its proxy materials, pursuant to this clause (C), a Stockholder Nominee (a) who would not be an independent director under the rules and listing standards of the United States securities exchanges

upon which the capital stock of the Corporation is listed or traded, any applicable rules of the SEC, or any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors (collectively, the "Independence Standards"), (b) whose election as a member of the Board of Directors would cause the Corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the United States securities exchanges upon which the capital stock of the Corporation is listed or traded, or any applicable law, rule or regulation, (c) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (d) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past 10 years, (e) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, or (f) who shall have provided any information to the Corporation or its stockholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

(11) Notwithstanding anything to the contrary set forth herein, if (a) a Stockholder Nominee and/or the applicable Eligible Stockholder breaches any of its representations, agreements or undertakings or fails to comply with any of its obligations under this clause (C) or clause (D) of this Section 9, or (b) a Stockholder Nominee otherwise becomes ineligible for inclusion in the Corporation's proxy materials pursuant to this clause (C) or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board of Directors or the presiding officer of the annual meeting, then (i) the Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (ii) the Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder, and (iii) the Board of Directors or the presiding officer of the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(12) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but withdraws from or becomes ineligible or unavailable for election at the annual meeting will be ineligible to be a Stockholder Nominee pursuant to this clause (C) for the next two annual meetings of stockholders. For the avoidance of doubt, the immediately

preceding sentence shall not prevent any stockholder from nominating any person to the Board of Directors pursuant to and in accordance with clause (A)(1)(b) of this Section 9.

(13) This clause (C) provides the exclusive method for a stockholder to include nominees for election to the Board of Directors in the Corporation's proxy materials (other than in the Corporation's proxy card, which shall be governed by the applicable requirements of Rule 14a-19 of the Exchange Act and the requirements of Section 9(A) and (B)).

**(D) General.**

(1) Only persons who are nominated in accordance with the procedures set forth in this Section 9 shall be eligible to serve as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9 and shall otherwise constitute a proper subject to be brought before the meeting. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the presiding officer of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 9 and, if any proposed nomination or business is not in compliance with this Section 9, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Notwithstanding anything to the contrary set forth herein, if the stockholder giving a notice of a nomination or of other business proposed to be brought before a meeting of stockholders does not appear or send a duly authorized agent to present the nomination or other proposed business, the Corporation need not present such nomination or other business for a vote at the meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Unless otherwise required by law, if any stockholder (i) provides notice pursuant to Rule 14a-19(b) of the Exchange Act and (ii) subsequently fails to comply with any requirements of Rule 14a-19 of the Exchange Act or any other rules or regulations thereunder, then the Corporation shall disregard any proxies or votes solicited for such nominees and such nominations shall be disregarded.

(2) For purposes of this Section 9, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the SEC pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) For purposes of this Section 9, no adjournment or postponement of any meeting (nor the notice or public announcement of such an adjournment or postponement) shall be deemed to constitute a new notice of such meeting for

purposes of this Section 9, and in order for any notification required to be delivered by a stockholder pursuant to this Section 9 to be timely, such notification must be delivered within the periods set forth above in this Section 9 with respect to the originally scheduled meeting.

(4) This Section 9 shall not be deemed to require inclusion of nominations or proposals of stockholders which the Corporation is not otherwise required to include in its proxy statement. Notwithstanding the foregoing provisions of this Section 9, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 9. Nothing in this Section 9 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 of the Exchange Act or to include the names of persons validly nominated under Section 9(A) or 9(B) for election as a director of the Corporation in the Corporation's proxy card in compliance with the applicable requirements of Rule 14a-19 of the Exchange Act.

(5) In addition to any other applicable requirements, any stockholder's notice pursuant to clause (A)(3) this Section 9, any Special Meeting Request and any Notice of Proxy Access Nomination shall set forth or be accompanied by the following (as applicable):

(a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (i) all information relating to such person that is required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for the election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, and (ii) the written representation and agreement required by clause (D)(8) of this Section 9;

(b) as to any other business that the stockholder proposes to bring before the meeting, (i) a brief description of the business desired to be brought before the meeting (which, if the proposal is for any alteration, amendment, rescission or repeal of these Bylaws, shall include the text of the resolution which will be proposed to implement the same), which business shall, in any case, be a proper subject to be brought before such meeting, and (ii) the reasons for conducting such business at the meeting;

(c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such person (including, if applicable, the name and address of such person as they appear on the Corporation's books), (ii) the class and number of shares of the Corporation which are owned beneficially and of

record by such person and any affiliates or associates of such person, (iii) the name of each nominee holder of shares of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of shares of the Corporation held by each such nominee holder, (iv) whether and the extent to which any option, warrant, forward contract, swap, contract of sale or other derivative instrument has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to any share of stock of the Corporation, (v) whether and the extent to which or any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of which is to manage the risk or benefit of share price changes in the stock price of the Corporation for such person, or any affiliates or associates of such person, to mitigate loss to such person, or any affiliates or associates of such person, with respect to any share of stock of the Corporation, or to increase or decrease the voting power of such person, or any affiliates or associates of such person, with respect to any share of the stock of the Corporation, (vi) a description of (x) all agreements, arrangements or understandings (whether written or oral) between such person, or any affiliates or associates of such person, and any proposed nominee, or any affiliates or associates of such nominee, (y) all agreements, arrangements or understandings (whether written or oral) between such person, or any affiliates or associates of such person, and any other person or persons (including their names) in connection with the nomination or the proposal of business by such person, or otherwise relating to the Corporation or the ownership of stock of the Corporation, and (z) any material interest of such person, or any affiliates or associates of such person, in the nomination or the proposal of business, including any anticipated benefit therefrom to such person, or any affiliates or associates of such person, and (vii) any other information relating to such person that is required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for the election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(d) a representation that the stockholder giving the notice (or a representative thereof) intends to appear at the meeting to present the nomination or bring such business before the meeting; and

(e) a representation as to whether or not the stockholder giving notice or the beneficial owner, if any, or any of their affiliates, associates or other persons acting in concert therewith intend to solicit proxies in support of

any proposed nominee other than the Corporation's nominees, and if any such person intends to solicit such proxies, a statement containing the additional information required under Rule 14a-19 of the Exchange Act.

(6) In addition to the information required pursuant to any other provision of these Bylaws, the Corporation may require any proposed nominee for election or re-election as a director to furnish any other information (a) that may reasonably be requested by the Corporation to determine whether the nominee would be independent under the Independence Standards, (b) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee, or (c) that may reasonably be requested by the Corporation to determine the eligibility of such nominee to be included in the Corporation's proxy materials pursuant to clause (C) of this Section 9 or to serve as a director of the Corporation.

(7) Any person providing any information to the Corporation pursuant to this Section 9 shall further update and supplement such information, if necessary, so that all such information shall be true and correct in all respects as of the record date for the determination of stockholders certified to vote at the applicable meeting, and such update and supplement shall be delivered by hand or by registered U.S. mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to, and received by, the Secretary at the principal executive offices of the Corporation not later than five business days following the later of the record date for the determination of stockholders certified to vote at the meeting and the date notice of the record date is first publicly disclosed. If a stockholder or beneficial owner, if any, or any of their respective affiliates, associates, or others acting in concert therewith intend to solicit proxies in support of any director nominee other than the Corporation's nominees, such stockholder shall deliver to the Corporation, no later than five business days prior to the applicable meeting of stockholders, reasonable evidence that it has met the requirements of Rule 14a-19 of the Exchange Act with respect to such nominees.

(8) In order to be eligible for election or re-election as a director of the Corporation, a person must deliver to the Secretary at the principal executive offices of the Corporation a written representation and agreement that such person (a) is not and will not become a party to (i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation in such representation and agreement or (ii) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than

the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with such person's nomination or service or action as a director that has not been disclosed to the Corporation in such representation and agreement, (c) will abide by the requirements of Section 1 of Article III hereof, (d) would be in compliance, if elected as a director of the Corporation, and will comply with the Corporation's code of business conduct and ethics, corporate governance guidelines, stock ownership and trading policies and guidelines, and any other policies or guidelines of the Corporation applicable to directors, and (e) will make such other acknowledgments, enter into such agreements and provide such information as the Board of Directors requires of all directors, including promptly submitting all completed and signed questionnaires required of the Corporation's directors.

(9) Any stockholder or beneficial owner, if any, or any of their respective affiliates, associates, or others acting in concert therewith, directly or indirectly soliciting proxies for the election of directors must use a proxy card color other than white, which shall be reserved for exclusive use by the Board of Directors.

**Section 10. List of Stockholders Entitled to Vote.** The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, no later than the tenth day before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days ending on the date before the meeting date: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

**Section 11. Stock Ledger.** The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 10 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

**Section 12. Conduct of Meetings.** The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the presiding officer of any meeting of the stockholders shall have the right and authority to convene and (for any reason or no reason) to recess or to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding officer, are appropriate for the proper conduct of the meeting. Such

rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation entitled to vote at the meeting, their duly authorized and constituted proxies, or such other persons as the presiding officer of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

**Section 13. Inspectors of Election.** The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability.

The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots including ballots cast by electronic transmission if participation at the meeting by means of remote communication is authorized by the Board of Directors as provided in Section 5, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

**Section 14. Manner of Giving Notice; Affidavit of Notice.** Written notice shall be given by the Corporation to any stockholder by any manner permitted by law, including, without limitation, either (a) personally or (b) by mail or other means of written communication (including electronic transmission by the Corporation), charges prepaid, addressed to such stockholder at such stockholder's physical or electronic address appearing on the books of the Corporation or given by such stockholder to the Corporation for the purpose of notice. If a stockholder gives no address or no such address appears on the books of the Corporation, notice shall be deemed to have been given if sent by mail or other means of written communication addressed to the place where the principal executive office of the Corporation is located, or if published at least once in



a newspaper of general circulation in the county in which such office is located. The notice shall be deemed to have been given at the time when delivered personally or deposited in the United States mail, postage prepaid, or sent by other means of written communication and addressed as hereinbefore provided. An affidavit of delivery or mailing, or other authorized means of transmitting, of any notice in accordance with the provisions of this Section 14, executed by the Secretary, any Assistant Secretary or any transfer agent, shall be prima facie evidence of the giving of the notice. If any notice addressed to the stockholder at the address of such stockholder appearing on the books of the Corporation is returned to the Corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the stockholder at such address, all future notices shall be deemed to have been duly given without further mailing if the same shall be available for the stockholder upon written demand of the stockholder at the principal executive office of the Corporation for a period of one (1) year from the date of the giving of the notice to all other stockholders. Notice shall not be given by electronic transmission by the Corporation after either one of the following: (i) the Corporation is unable to deliver two (2) consecutive notices to the stockholder by that means or (ii) the inability to so deliver such notices to the stockholder becomes known to the Secretary, any Assistant Secretary, the transfer agent, or other person responsible for the giving of the notice.

### **ARTICLE III**

#### **DIRECTORS**

**Section 1. Number and Election of Directors.** Subject to the Certificate of Incorporation, the Board of Directors shall consist of not less than three nor more than 20 members, the exact number of which shall be fixed from time to time by the Board of Directors. Subject to the Certificate of Incorporation and except as provided in Section 2 of this Article III, at any meeting of stockholders in which the election of directors shall be considered (i) a nominee for director in an uncontested election shall be elected if the votes cast “for” such nominee’s election exceed the votes cast “withheld” in such nominee’s election and (ii) any nominee for director in a contested election shall be elected by a plurality of the votes cast. The directors shall be elected in the manner set forth in the Certificate of Incorporation, and as provided in the Delaware General Corporation Law. Any nominee for director who fails to receive the requisite vote in any uncontested election in accordance with this Section 1 shall, within 90 days from the date of the election, tender his or her written offer of resignation for consideration by the Governance Committee of the Board of Directors (or such other committee of the Board of Directors performing the nominating/corporate governance duties of the Board of Directors). Such committee of the Board of Directors shall consider all of the relevant facts and circumstances and recommend to the Board of Directors the action to be taken with respect to such offer of resignation. For purposes of this Section, (i) a “contested election” shall mean an election in which the Secretary of the Corporation determines that the number of nominees as of the date that is seven days prior to the date that the Corporation first mails to stockholders the notice for the meeting at which directors are to be elected exceeds the number of directors to be elected at such meeting, and (ii) an “uncontested election” shall mean any election that is not a “contested election.”

Each director shall serve for a term ending at the next following annual meeting of stockholders, and until his or her successor is duly elected and qualified, subject to such director's earlier death, resignation, disqualification or removal. Any director may resign at any time only upon written notice to the Corporation. Directors need not be stockholders.

**Section 2. Vacancies.** Unless otherwise required by law or the Certificate of Incorporation, vacancies arising through death, resignation, disqualification, removal, an increase in the number of directors or otherwise may be filled only by a majority of the remaining directors then in office, though less than a quorum, or by a sole remaining director. The director so chosen shall hold office for a term ending at the next following annual meeting of stockholders, and until the director's successor is duly elected and qualified, subject to the director's earlier death, resignation, disqualification, or removal.

**Section 3. Duties and Powers.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, the Certificate of Incorporation or these Bylaws required to be exercised or done by the stockholders.

**Section 4. Meetings.** The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware. After the adjournment of each annual meeting of stockholders, the Board of Directors shall hold a regular meeting and no notice need be given for such meeting unless the meeting is not held at the principal place of business provided in Section 2 of Article I hereof. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chair of the Board, the Chief Executive Officer or the President and shall be called upon the written request of a majority of the directors. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting or by telephone, including voice messaging system, or by electronic transmission on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

**Section 5. Quorum.** Except as otherwise required by law or the Certificate of Incorporation, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

**Section 6. Actions by Written Consent.** Unless otherwise provided in the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing

or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

**Section 7. Meetings by Remote Communications.** Unless otherwise provided in the Certificate of Incorporation, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 7 shall constitute presence in person at such meeting.

**Section 8. Committees.** The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required. Except as otherwise required by law or the Certificate of Incorporation, at all meetings of committees of the Board of Directors, a majority of the entire committee shall constitute a quorum for the transaction of business, and the act of a majority of the members of the committee present at any meeting at which there is a quorum shall be the act of the committee. If a quorum shall not be present at any meeting of a committee of the Board of Directors, the members of the committee present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

**Section 9. Compensation.** The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors and/or a stated salary as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Chairpersons and members of special or standing committees may be allowed like compensation for serving on those committees and for attending committee meetings.

**Section 10. Interested Directors.** No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction or solely because the director or officer's vote is counted for such purpose if (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are

known to the Board of Directors or the committee, and the Board of Directors or committee, in good faith, authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

**Section 11. Chair and Vice Chair of the Board.** The Board of Directors may appoint a director as Chair of the Board, which position shall be a board position only and not an officer position unless the Board of Directors determines that such position shall also be an officer position having the powers and duties set forth in Article IV, Section 4. The Chair of the Board of Directors shall preside at all meetings of the Board of Directors and at all meetings of the stockholders. The Chair of the Board shall have such other powers and duties as designated in these Bylaws and as the Board of Directors may otherwise determine, but it shall have the powers and duties attributed to the Chair of the Board through Article IV only if the Board of Directors determines that such position is also an officer position.

The Board of Directors may also appoint one or more Vice Chair of the Board from the directors, which position shall be a board position only and not an officer position unless the Board of Directors also determines that such position shall also be an officer position having the powers and duties set forth in Article IV, Section 5. If elected, a Vice Chair of the Board shall have such powers and duties as designated in these Bylaws and as the Board of Directors may otherwise determine, but it shall have the powers and duties attributed to the Vice Chair of the Board through Article IV only if the Board of Directors determines that such position is also an officer position.

## **ARTICLE IV**

### **OFFICERS**

**Section 1. General.** The officers of the Corporation shall be a President, a Secretary, and such other officers as the Board of Directors may from time to time elect or appoint, including a Chair of the Board (who must be a director), one or more Vice Chair (who must be directors), a Chief Executive Officer, a Treasurer, one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law or the Certificate of Incorporation. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chair of the Board of Directors or any Vice Chair, need such officers be directors of the Corporation.

**Section 2. Election.** The Board of Directors, at its first meeting held after each annual meeting of stockholders, shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined

from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified or until their earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

**Section 3. Voting Securities Owned by the Corporation.** Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chair of the Board, the Chief Executive Officer, the President or any Vice President or any other officer authorized to do so by the Board of Directors, and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time, confer like powers upon any other person or persons.

**Section 4. Chair of the Board of Directors.** The Chair of the Board shall have such powers and duties as shall be assigned to him or her by these Bylaws or by the Board of Directors. If at any time the Board of Directors has designated an Executive Chair, such person shall also serve as the Chair of the Board with all of the powers and duties as are assigned to the Chair of the Board by these Bylaws and all such other powers and duties as are assigned to him or her by the Board of Directors.

**Section 5. Vice Chair of the Board of Directors.** Vice Chair of the Board of Directors shall have such powers and duties as shall be assigned to them by the Board of Directors.

**Section 6. Chief Executive Officer.** The Chief Executive Officer shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors and of the committees thereof are carried into effect. The Chief Executive Officer shall have authority, which he or she may delegate, to execute certificates of stock, bonds, deeds, powers of attorney, mortgages and other contracts, under the seal of the Corporation, unless required by law to be otherwise signed and executed and unless the signing and execution thereof shall be expressly and exclusively delegated by the Board of Directors to some other officer or agent of the Corporation. In the absence or disability of the Chair of the Board, the Chief Executive Officer shall preside at meetings of stockholders or of the Board of Directors.

**Section 7. President.** The President shall, subject to the control of the Board of Directors and the Chief Executive Officer, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall have authority to execute certificates of stock, bonds, deeds, powers of attorney, mortgages and other contracts, under the seal of the Corporation, unless required by law to be otherwise signed and executed and unless the signing and execution thereof shall be expressly

and exclusively delegated by the Board of Directors to some other officer or agent of the Corporation. In the absence or disability of the Chair of the Board or the Chief Executive Officer, the President shall preside at meetings of stockholders. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these Bylaws or by the Board of Directors or the Chief Executive Officer.

**Section 8. Vice Presidents.** At the request of the President or in the President's absence or in the event of the President's inability or refusal to act, the Vice President, or the Vice Presidents if there is more than one (in the order designated by the Board of Directors or the Chief Executive Officer) shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe.

**Section 9. Secretary.** Unless otherwise provided in these Bylaws, the Secretary shall keep minutes of all meetings of the Board of Directors and all meetings of stockholders in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors, the Chair of the Board, the Chief Executive Officer or the President. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Secretary shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct.

**Section 10. Treasurer.** The Treasurer shall have the custody of the corporate funds and cash equivalents and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

**Section 11. Assistant Secretaries.** Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chair of the Board, the Chief Executive Officer, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's disability or refusal to act, shall perform the duties of the Secretary and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

**Section 12. Assistant Treasurers.** Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chief Executive Officer, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of the Treasurer's disability or

refusal to act, shall perform the duties of the Treasurer and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer.

**Section 13. Other Officers.** Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

## **ARTICLE V**

### **STOCK**

**Section 1. Form of Certificates.** The shares of stock of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation (i) by the Chief Executive Officer, the President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such stockholder in the Corporation.

**Section 2. Signatures.** Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

**Section 3. Lost Certificates.** The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or the owner's legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

**Section 4. Transfers.** Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock represented by a certificate shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be canceled before a new certificate may be issued. No transfer of stock

shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

**Section 5. Record Date.**

(A) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 6. Record Owners.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, to vote as such owner and to hold liable for calls and assessments a person registered on its books as the owner of shares, and the Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

**ARTICLE VI**  
**GENERAL PROVISIONS**

**Section 1. Dividends.** Dividends upon the capital stock of the Corporation, subject to the requirements of the Delaware General Corporation Law and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 6 of Article III hereof) and may be paid in cash, in property or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any



funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

**Section 2. Disbursements.** All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

**Section 3. Fiscal Year.** The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

**Section 4. Corporate Seal.** The corporate seal shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced or otherwise.

**Section 5. Interpretation and Application of the Bylaws.** To the fullest extent permitted by law and except as otherwise expressly provided by these Bylaws, the Board of Directors (or any other person or body authorized by the Board of Directors) shall have the power and authority to interpret these Bylaws and make any and all determinations necessary or appropriate to apply any provision of these Bylaws to any persons, facts or circumstances. Any such interpretation or determination made in good faith by the Board of Directors (or any other person or body authorized by the Board of Directors) shall be conclusive and binding all persons, including the Corporation and its stockholders.

## **ARTICLE VII**

### **INDEMNIFICATION**

**Section 1. Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation.**

Subject to Section 3 of this Article VII, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by the law as it exists or may hereafter be amended, any person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person or a person of whom they are the legal representative is or was or has agreed to become a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director or officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any and all liability and loss suffered or incurred and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The

termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

**Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.** Subject to Section 3 of this Article VII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

**Section 3. Authorization of Indemnification.** Any indemnification under this Article VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VII, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

**Section 4. Good Faith Defined.** For purposes of any determination under Section 3 of this Article VII, a person shall be deemed to have acted in good faith and in a manner such person

reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or 2 of this Article VII, as the case may be.

**Section 5. Application for Indemnification to a Court.** Notwithstanding any contrary determination in the specific case under Section 3 of this Article VII and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery in the State of Delaware for indemnification to the extent otherwise permissible under Sections 1 and 2 of this Article VII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 1 or 2 of this Article VII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

**Section 6. Expenses Payable in Advance.** Expenses incurred by a director or officer in defending or investigating a threatened or pending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VII.

**Section 7. Nonexclusivity of Indemnification and Advancement of Expenses.** The indemnification and advancement of expenses provided by or granted pursuant to this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any Bylaw, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it

being the policy of the Corporation that indemnification of the persons specified in Sections 1 and 2 of this Article VII shall be made to the fullest extent permitted by law. The provisions of this Article VII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or 2 of this Article VII, but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise.

**Section 8. Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VII.

**Section 9. Certain Definitions.** For purposes of this Article VII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

**Section 10. Survival of Indemnification and Advancement of Expenses.** The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 11. Limitation on Indemnification.** Notwithstanding anything contained in this Article VII to the contrary, except for proceedings to enforce rights to indemnification (which

shall be governed by Section 5 hereof), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

**Section 12. Indemnification of Employees and Agents.** The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VII to directors and officers of the Corporation.

**Section 13. Contractual Rights.** Without the necessity of entering into an express contract, the rights conferred upon directors and officers under this Article VII with respect to indemnification and the advancement of expenses shall be deemed to be contractual rights upon which the directors and officers are presumed to have relied in determining to serve or to continue to serve in their capacity with the Corporation. The rights provided in this Article VII shall be effective and legally enforceable to the same extent and as if provided for in a contract between the Corporation and each director or officer. Any amendment to or repeal of this Article VII shall not adversely affect the rights of indemnification provided in this Article VII with respect to any acts or omissions of a director or officer occurring prior to such amendment or repeal.

## **ARTICLE VIII**

### **AMENDMENTS**

**Section 1. Amendments.** These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such meeting of stockholders or Board of Directors as the case may be. Changes to the Bylaws or the adoption of new Bylaws must be approved by either the affirmative vote of the holders of at least a majority of the combined voting power of the then-outstanding shares of Voting Stock, voting together as a single class, or by the affirmative vote of at least a majority of the then-authorized number of directors.

**Section 2. Entire Board of Directors.** As used in this Article VIII and in these Bylaws generally, the term “entire Board of Directors” means the total number of directors which the Corporation would have if there were no vacancies.

CERTIFICATION PURSUANT TO  
RULE 13a-14(a)/15d-14(a),  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Richard E. Muncrief, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Devon Energy Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2022

/s/ Richard E. Muncrief

Richard E. Muncrief

President and Chief Executive Officer

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CERTIFICATION PURSUANT TO  
RULE 13a-14(a)/15d-14(a),  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jeffrey L. Ritenour, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Devon Energy Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2022

/s/ Jeffrey L. Ritenour

Jeffrey L. Ritenour

*Executive Vice President and Chief Financial Officer*

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CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Report of Devon Energy Corporation (“Devon”) on Form 10-Q for the period ended September 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Richard E. Muncrief, President and Chief Executive Officer of Devon, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Devon.

*/s/ Richard E. Muncrief*

Richard E. Muncrief

*President and Chief Executive Officer*

November 2, 2022

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CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Report of Devon Energy Corporation (“Devon”) on Form 10-Q for the period ended September 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Jeffrey L. Ritenour, Executive Vice President and Chief Financial Officer of Devon, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Devon.

*/s/ Jeffrey L. Ritenour*

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Jeffrey L. Ritenour

*Executive Vice President and Chief Financial Officer*

November 2, 2022

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